

A Treatise OF GAVELKIND, Both Name and Thing.

Shewing the true *Etymologie* and *Derivation*
of the one, the *Nature*, *Antiquity*,
and *Original* of the other.

With sundry emergent Observations, both
pleasant and profitable to be known of *Kentish-men*
and others, especially such as are studious,
either of the ancient Custome, or
the Common Law of this
Kingdome.

By
(A well-willer to both)
William Somner.

Virg. 1. Georg.

Felix qui potuit rerum cognoscere causas.

Cranz. lib. 2. Metrop. 9.

*Nemo sibi blandiatur de auctoritate veterum, quibus etsi fabula displicent,
non tamen habebant unde falsitatem earum coarguere possent. Sed
nostra aetate crebrescentibus literarum monumentis, inexcusabilis torpor
est in fabulis sciemes, prudentesque permanere.*

LONDON,

Printed by R. and W. Leybourn, for the Authour, and are to be sold by
John Crooke at the Ship, and *Daniel White* at the Seven
Stars in *St. Pauls Church-yard*. 1660.

A Treatise

१०

GALEKIND

Both Name and Thing

Showing the true Etymology and Derivation
of the one, the Nature, Antiquity,
and Original of the other.

With sundry emergent Observations, both pleasant and profitable to be known of Knaiss-men and others, especially such as are Indians, either of the ancient Customs, or

the Common Law of the Kingdom.

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(A web-site to boot)

... 2000 年 12 月 31 日

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10. 11. 1947

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a formal address, and it is the first of its kind since the signing of the Constitution. The President, James Buchanan, is addressing the Congress, and he is doing so in a very formal and dignified manner. He is discussing the state of the Union, and he is also discussing the issue of slavery. He is saying that the Union is in a state of crisis, and that the issue of slavery is the cause of this crisis. He is also saying that the President has a duty to maintain the Union, and that he is doing so to the best of his ability.

Scenes in St. Louis Church - 1860.
The Church at night, and the interior of the Church.
Printed by J. and W. L. Brown, on the 1st of June 1860.

John C. Cook at the top, and David W. Cook at the bottom.

2000 in St. Louis Church - 1000.



TO THE
Right Reverend Father in God,

JOHN WARNER,

D. D. Lord Bishop of Rochester.

My Lord;



Such is the largeness of your
charitable heart, so great
and tender the compassion
lodged in your pious breast,
towards those (especially)
who for their good affection unto *Monar-*
chy in the State, and *Prelacy* in the Church;
for their fidelity and loyalty to the Prince,
their Father, and their conformity and du-
ty to the Church, their Mother, (a pair of
new-devised mortal sins) are forced to par-

a

take

The Epistle

take with both in the miseries and martyrdoms of the eleventh persecution: that many and most thank-worthy and obliging have the favours and refreshments been, which my self (amongst a multitude of poor Clergy-men, with their widows and others in these unhappy times, suffering and almost sinking under the heavie pressures and barbarous plunderings of a sort of *cruel and unreasonable men*, mouthing and pretending nothing more than the reforming of abuses, but minding and practising nothing else but the abuse and overthrow of a well-absolved Reformation) have for many years together constantly received from your Lordship.

And albeit your Lordship hath drank of the same cup, and suffered with us, in the same fate, and on the same score, as to all your ecclesiastical estate and fortunes: yet great, very great, notwithstanding hath the shelter and succour been which we have found from your Lordship (thanks to God, fairly blest the whitest with secular acquiescence and temporal demeanness) against
that

Dedicatory.

that hideous and impetuous storm (of rapine and ruine) which of late years, like a violent Hurricane, hath born down before it a woful number of poor Innocents, guilty (many of them) of no crime, but of (what sober times never accounted any, nay, even had in honour and respect) that of their prelatical, either function or relation: and (to the shame of the Reformation) much worse used in these dayes of its maturity, than were the Monks and Friars in the morning and infancie thereof; who, for their security and preservation from that penury and beggery to which their expulsion would otherwise inevitably have exposed them, had (even by the dictates of humanity) according to their several, whether higher or lower condition in their Cloisters, a convenient and competent annual stipend allotted them by the State for life: whereas in these dayes (as if humanity were as indeed it is full out, as Antichristian as Episcopacie, and therefore cast off with it:) no such care, no such course is thought on for some thousands of

The Epistle

persons depending on the Hierarchy, to keep them and theirs, cast (many of them) out of house and home, from starving in the streets.

Much, in short, I am bound to blesse both God and your Lordship for a good share and proportion of that both countenance and maintenance which in these calamitous and wretched times have holpen to keep and buoy up my fainting and sinking spirits, and fortifie my drooping and discomposed mind against despondencie and impatience.

In thankful acknowledgement, and just celebration, therefore of these your Lordships pious and charitable dispensations, which I can no other way requite, but (as your Beadsman) by my prayers for you to him, who (to the lasting honour of your sacred, though despised, Order, and the shame and grief of your & its adversaries) hath made your Lordship both able and willing to become so great an example of piety and goodnesse: I have laid hold on that opportunity for proclaiming this truth

to

Dedicatory

to the world, (without offence, I hope; to your Lordships singular modesty, at once both silencing your tongue to all Pharisaicall ostentation, and stopping your ear to all Parasitical adulation) which the publishing of the present small Treatise hath put into my hands: for the commending whereof to your Lordships patronage, I have not wanted the conconitancie of other good inducements. As (first) that thereby your Lordship might have some accompt of the employment of my talent, and my spending a good part of that time (my Saxon Dictionary taking up the rest) wherein you have been pleased to make me (an exauctorated Register) one among the many objects of your beneficence and charity. Secondly, that the subject and argument of this work lies much in your Lordships way: your pastorall charge (of right) intercommoning with it in a good part of the same scene and circuit. A third may be that benigne aspect and favourable eye which your

The Epistle

Lordship hath already cast, aswell on the work as the Authour; by giving it your approbation, and him your encouragement to publish it, I shall spare to add more reasons.

And now congratulating to my self the happines of this opportunity, to discharge some part of that great debt (of thankfulness) which I do, and shall ever ow your Lordship for all your signal favours, I humbly crave both your Lordships good acceptance of so mean a return, and that by your Lordships licence and good liking, the present Treatise may have the honour to passe into common view under your Lordships name: A name indeed (for the great learning, piety, prudence and charity of the Bearer) of so much honour and price, and so worthy of eternal memory, as it deserves to lead up, and stand in the front of a more large, elaborate, and honourable work. Where hoping I may one day find it, I beg, together with your Lordships pardon for the boldness of this
address,

Dedicatory.

address, that blessing which from such a
Reverend Father of our Church, none of
her true sons but highly values, and yet
none more than.

(*Right Reverend*)

Your Lordships in all humble

duty and observance,

William Somner.

Delivery

Abdels, that bidding which from such a
Reverend Father of our Church, none of
her true sons but highly values, and yet
none more than


(Right Reverend)

William Somner



THE PREFACE

Courteous Reader,

T is now full eighteen years since by solempne promise, I became engaged to my Countrey-men, upon their good acceptance of certain of my labours, in behalf of our City, where-with I then presented them, to proceed to the same, or some other such like undertaking for the County; a thing, which as I then really intended, so have I not since wanted that encouragement for it from the better sort (expressed by their courteous acceptance of those my former labours) which I could expect. But being soon after (proh dolor!) overtaken by that impetuous storm (of civil war) not yet quite blown over, causing the distraction, and threatening the destruction of this once renowned Kingdome, I was necessitated to betake my self to other thoughts, chiefly how I might secure my self against the fury, in warding off the danger,

The Preface.

of the present storm; being not able, I confesse, to reach to that high pitch of sedulity and magnanimity, both in this kind to which the Grecian Socrates is said to have attained, whose thoughts were ever running on his book; insomuch, as but the very next night before he was to suffer death, (regardlesse of his so neer approaching danger, able to indispose the mind, discourage the industry, and shake the constancie of any common spirit) he was desirous to learn Musick, because (saith the Story) he would die still learning somewhat. Being therefore thus diverted, and utterly for the time decomposed for the performance of my promise, I hope not onely to be excused of my Countrymen for (what had not else been hitherto delayed) my Countie-undertaking, but also to obtain of them yet farther respite, in hope of a better opportunity, for the discharge of that debt. For my more easie purchasing whereof at their hands, and that they and others may perceive, that I have not been altogether idle all this while; pitching in my thoughts upon our Kentish Custome of
Gavel-

The Preface.

Gavelkynd, and being not unfurnished of matter in the progresse of my studies gleaned and gathered from old Records, enabling me, with the help of that little skill I have attained in the Saxon tongue (to the study whereof I was encouraged by my precious friend and ever-honoured Meccenas, Dr. Casaubon, as is elsewhere by himself truly averred) to some more than vulgar discourse thereof; as a specimen and earnest of my further intentions for the County, I betook my self at spare hours to the perusal, resolving on the publication, of those collected notes and notions, disposing them so, that as they have to satisfaction informed me in the points proposed, so they may be of like use to others, willing to bestow their pains, and lay aside all prejudice in the perusal of them,

Kent, I considered, had been far and neer long celebrated for her Gavelkynd, though not so known either at home or abroad, whether in point of etymologie, or properties, (that especially of Partition, rendring it so incomparably famous throughout the Kingdome) as truth would. To wipe off therefore

The History

forest of darkness of narrow, which time affects
 all, that at present of corruption, which is now
 translated to it, I have in the present discomfite
 to be a chief, to affect what I conceive
 to be the true sense: and derivation of the
 term, for the understanding of the (a) names
 whence the properties, that especially here
 instanced, do proceed, for the better judging
 of the nature of it, according to what was
 propounded to my self in all my researches,
 which is to know things, not so much in
 their present or primitive state, as they are
 themselves, than to effecting them given
 (a) saith the (b) Philosopher, cum quod-
 que sine arbitramur, cum in his causis &
 principia cognoscimus. of which I am now
 By the process and progression of the ar-
 gument, having a fair and pertinent in-
 strument, of wit and wit, yet of itself, which is
 long and tedious, not of the Swabian Rod-
 land and Holcland, for of the French & Flou-
 dam and Alodum, (a pair of woads, the
 latter, that have long and much perplexed
 many prime woad families, of disfigure and
 find out their true and proper derivations,

The Preface.

to the occasion of great varieties in the point, each man abounding in his own, and that, for the most part, a different and singular sence) I thought it not amisse to make one in the number of such Etymologists, and although with singularity, I confesse, and dissent from all the rest, yet perhaps so much to the purpose (absit iactantia dictis!) as, if not to hit the mark, yet at least to come so neer it as few before have done. Alike singular, as both here, and before in the derivation of Gavelkynd, so afterwards I may be found in that of Socage, yet I trust with so much truth, and that so fully evidenced, as will serve, I hope, to render me with the sober and ingenuons, worthy, if not of thanks, yet of excuse and pardon, if they differ in opinion from me.

Here also (good Reader) be advertised, that whereas, by occasion of our discourse in the third Proposition, concerning the Partition-property in Gavelkynd, I had obiter, or incidently, made some mention of the Writ, De rationabili parte bonorum, some-
A time

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time (by means of that partition mentioned in the old Kentish Customal) obtaining, and now again (if the endeavours of some may take effect) reviewing in this County; it came afterwards into my mind to think it would not be impertinent to the present Discourse, somewhat further to enlarge in that particular: that by enquiry made into the Antiquity, and tracing the progresse of the Partition intended by this Writ from its first birth until its full growth, we might be the better able to give judgment, & make the more probable conjecture of the present validity or invalidity thereof. My discoveries therefore being made and communicated to some judicious friends, not without their acceptance and my encouragement for publication, I have adventured to add them at the end of that third Proposition, pag. 91.

As for my thwarting the common opinion, concerning our composition with the Norman Conquerour, and the consequents of it, I offer no Apologie here, as having already made it in the proper place, and that, I also trust,

The Preface.

trust, so fully, as I may well expect to be excused of it here. In sum, loving truth (the end of all Science) for it self, and altogether unbyass'd with any by-respects, whether of vain glory, singularity, or the like, I have made it my constant endeavour in what is here propos'd and publish'd, that Truth alone (than which saith the Philosopher, nothing is sweeter, nothing more precious) might triumph over Falshood, Antiquity over Novelty. If hereby I have done either of them any right, or any friends any pleasure, as the chiefest reward I expect for all, I shall desire that such a measure of respect may be vouchsafed, as to those old Records from whence the chief materials in this structure have been taken, so to that ancient learning which hath contributed fitting tools wherewith to work the same materials, and fit them for that use, as may secure and rescue both (uncapable of other recompence) from that scorn, neglect and contempt in the dayes of so much novelty so freely cast upon them, since by falling into

Idem 2. Metaphys.

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some hands, so good an improvement may be made of them for the publike.

I may perchance (at first sight, at least) be thought too bold with the common Lawyers, too busie in their Common-wealth, too much meddling in matters of their peculiar Science; yet no otherwise, I hope, than that they and their friends may be willing to excuse me. I am one that honour their profession, and have here done or said nothing out of opposition; my intent being onely in my way to do them service, and their profession right, by holding forth to publike view some Antiquities tending at once to the satisfaction of the one, and illustration of the other. For which purpose I have by me some other things in a readinesse for the publike, and which shall not (God willing) much longer be retarded, in case these my present endeavours (as my past have done) meet with any proportionable encouragement, and the times permit, by the continuance of our Countie peace, (Peace, I say, that mother of Arts:) which with an enlarge-

ment

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ment and establisment of that blessing throughout the three Kingdoms, is the subject of his daily devotions, who (not for any present, or private ends or interest of his own, like a base self-seeker; but for the good and welfare of the Publike and Posterity, like a true Patriot :) doth cordially wish and long for (what he is not out of hope to see) the re-establisment of Church and State, and the prosperity of both, under (their wanted and wanted nursing Fathers) the Prince and the Prelate: untill when, and the stream of governments return into its old chanel, he cannot but look upon those men with wonder and pity, who abuse both themselves and others, with the fond and senselesse hopes and expectation (so often disappointed) of any lasting peace or settled times: whereas indeed nothing but feuds and factions, schisms and fractions, animosities and enmities, minings and counterminings, civil dissentions and foreign invasions; in a word, turnings and overturnings, can in reason be expected, untill (as the Prophet

The Preface.

Ezek. 33. 17. *bath it) be come, whose (undoubted) right
it is.*

Now that righteous Judge of all the world, who helpeth those to right which suffer wrong; he by whom alone Kings reign; he who by his holy Apostle hath both instructed and enjoined us to pray, as for all men in general, so especially for Kings; he who hath hitherto so miraculously preserved him, in his person from violence, in his morals from deboshment, and in his Religion from apostacie; in mercie both to King and Kingdome, continue his gracious hand of preservation over him, and in order to his happy coming, so dispose the indisposed hearts of his seduced people, to a cheerful and a speedy reception of him, and loyal affection to him, that after all these turnings and overturnings, both Prince and People, without further hostility and effusion of blood, may return to what is eithers right: he recovering their subjection and duty, they his protection and clemencie, and both rejoycing in each others felicity: that so (all injuries on both
parts

The Preface.

parts forgiven and forgotten, all fears and jealousies, all mis-understandings and prejudices, for ever laid aside) with righteousness and peace they may again meet, and sweetly greet, kisse, careffe, indear and espouse each other, and become as those whom God himself bath joyn'd together, by man or Dewil never to be separated. So (in hope of every good Patriots Amen :) prays (courteous Reader)

Thine humble Servant,

William Somner.

THE PRIMER

that forgiven and forgotten, all sins and
iniquities, all un-
derstanding and pre-
servation (in the right
and true way) again meet, and
perfectly give, till: earthly, and e-
ternal, each other, and become in that whom
God himself hath joined together, by man or
Devil never to be separated. So (in hope of
every good Patriotic Amen:) prayer (con-
clude)

THE PRIMER

THE PRIMER




To expedite such (in their perusal of this work) as are ignorant, but studious, of the *Saxon* Language, the Authour (although he have but lately set forth a *Saxon Dictionary*) hath thought it very fit here to prefix the *Saxon* Alphabet and Abbreviations.

a b c d e f g h i k l m n o p q r s t u w x y z.
a b c b e f g h i k l m n o p q r r u p x y z.

th th. that and.

þ ʒ þ ʒ






Errata.

P Ag. 4. *lin.* 21. and customary. *lin.* 22. yeelded it. p. 18.
l. 8. Bians. p. 21. l. 1. after *Consuetudo*. l. 18. Snaue. l. 27.
Shorham. p. 24. l. 18. Oale-gavel. p. 25. l. 2. Clyve. l. 16.
Chartbam. p. 26. l. 20. of it in that composition. p. 27. l. 5.
rents and services. p. 29. l. 7. find it in. l. 28. to the Tenant,
berter. l. 31. Fremfeld. p. 30. l. 27. not alienable. p. 31. l. 21.
Gamellerum. l. 25. Hervicus. p. 34. l. 10. rather say. l. 14.
ma'am. l. 18. firmam. l. 20. construe. p. 36. l. 2. Counties. p. 37.
l. 9. the which word. p. 38. l. 18. populbcunbe. *ibid.* eopbcunbe.
l. 27. of former times. p. 39. l. 13. Herlewinum. p. 55. l. 21. of
times. p. 58. l. 14. *equivalentem*. p. 72. l. 4. retained. p. 83. l.
ult. construe it thus. p. 96. l. 2. Salvo. p. 117. l. 4. Drosfmannus.
p. 119. l. 8. Demesne. p. 123. l. 6. those and succeeding. p. 142.
in marg. L. 1. ff. si ag. p. 162. l. 24. And as it is. p. 175. l. 1.
priori. ibid. in marg. Burgor. apud Scotos.

Some literal and such like other smaller faults there are, be-
sides mis-pointings: which being as easily amended as obser-
ved, are therefore here pretermitted.





GAVELKYN D.



Mong the many singularities of Kent, that of so much note, both at home and abroad, commonly called *Gavelkynd*, may seem to bear away the bell from all the rest, as being indeed a property of that eminent singularity in the Kentishmens possessions, so generally in a manner, from great antiquity, over-spreading that County, as England at this day cannot shew her fellow in that particular, yet so unhappy the whilest are both Kentish-men and others, in the right understanding both of name and thing, that although it be the daily subject of every mans discourse, even of all professions, yet remains it hitherto, both in the one respect and in the other, so obscure, and in so much want of further illustration to make it known, as if never yet by any seriously considered of. Purposing therefore to contribute my best assistance towards a right and full discovery; in order therunto, and for my more methodical proceeding,

B

I shall

I shall branch out my discourse into these five following heads or propositions: viz.

1. The true etymologie and derivation of the name, including a plain confutation of that which is commonly received.
2. The nature of *Gavelkynd*-land in point of partition.
3. The antiquity of *Gavelkynd* custome, in point especially of partition, and why more general in Kent than elsewhere.
4. Whether *Gavelkynd* be properly a Tenure, or a Custome; and if a Custome, whether inherent in the land or not.
5. Whether before the Statute of Wills (32 and 34 Hen. 8.) *Gavelkynd*-land in Kent were devileable, or not.

PROPOSITION I.

The true etymologie and derivation of the name, including a plain confutation of that which is commonly received.

TO begin with the first: (the true Etymologie and derivation of the name, &c.) By the common and received opinion of these dayes, obvious and easie to be found, both in the writings and discourses of Kentish-men and others, this Custome (as commonly called) owes its name and original to the nature of the land in point of descent. To consulte (for instance) a few of the multitude

rude of printed opinions looking that way, collected from the most eminent of our modern and late Writers, as well Antiquaries as Lawyers, and intending to steer a retrograde course in this re-search, I shall begin with one of the latest, Sir Edward Coke, who in his Notes, or Illustrations upon *Littleton*, tit. Villenage, Sect. 210. verb. *en Gavelkinde*, glosseth the text thus: *Gave all kynd: for (saith he) the Custome giveth to all the sons alike.* Not long before him, another learned Knight and famous Antiquary, taking the word to expound in his Glossary of antiquated words, saith, that it is termed *Gavelkynd*, either, *Quasi debitum vel tributum soboli, pueris, generi, i. e. as it were of right belonging and given* (intimated in the two first syllables, *gavel*, or *garol* :) *to the issue, children, or kynd*, (signified by the last, *cyn*, or *kynd* :) Or else secondly (saith he) from *gife-eal-cyn*, i. e. *given to all the next in kindred.* *Verstegan* (to ascend in our gradation one step higher) censurcth the word of corruption, saying, that it is corruptly termed *Gavelkynd*, for *Give all kynd*, which after him is as much to say, as, *Give each child his part.* From whom Mr. *Cambden* differs as little in time, as in opinion, when he saith it is called *Gavelkynd*, that is, saith he, *give all kynne.* Before all these, Mr. *Lambard*, (the first that undertook the etymologie, and whom, beside the former, * Judge *Doderidge*, * Dr. *Cowell*, the Authour of the New Terms of Law, and many more, *longo agmine*, are known to follow) in his explication of Saxon words prefixed to his *Archaion*, verb. *Terra ex scripto*, is clear for the derivation of the word from the Saxon *gife-eal-cyn*: *Credo* (saith he) *ut terra illa Gavelkyn, quasi gife-eal-cyn,*

Sir Hen. Spelman, in voce *Gavelesum.*

Britannia, in Kent.

* The English Lawyer, p. 73.

* Interpreter, in voce.

Perambul.
p. 528.

id est, omnibus cognatione proximis data, dicatur. But afterwards, (as if upon second thoughts altered in his opinion) he coupleth this derivation with a second, and so at length is found to share his opinion of the words original between two conjectures, grounded both upon the nature of the land; the one in point of Descent, the other of Rent and Services. In reference to the former of which, he saith, that, *Therefore the land was called either Gavelkyn, in meaning, give all kyn, because it was given to all the next in one line of kinred; or, give all kynd, that is, to all the male children: for kind (saith he) in Dutch signifieth yet a male child.* And in relation to the latter, he saith, that, *It is well known, that as Knights-Service land required the presence of the Tenant in warfare, and battell abroad: so this land (being of Socage tenure) commanded his attendance at the plough, and other the Lords affairs of husbandry at home: the one by manhood defending the Lords life and person, the other by industry maintaining with rent, corn and victual his estate and family.* *This rent (as there he adds) and customary payment of works, the Saxons called gafol, and thereof (as I think) they named the land that yeilded it. Gafol let or gafolc ynd, that is to say, Land letten for rent, or of the kind to yeild rent, &c.* The Authour (I confesse) modestly leaves it free to the Reader to receive either of these conjectures, or to refuse both, as it shall best like him: but the former of the two, being *prima facie*, of a more plausible sound and allusion than the other, (an advantage very considerable with most men, whose guidance notwithstanding is not alwayes to be followed :) and that having gotten the start of her fellow in time, hath not fail'd to keep it
ever

ever since, having proved the more acceptable of the twain, and by this time found so many followers, and those, like the first Authour, of so great credit, as that whosoever shall contradict the one, or dispute the other, can do neither without exceeding prejudice; so difficult a lesson it is with some to unlearn, (a) whose minds are as hardly weaned from an opinion which their fancie hath once approved, as others are from an habit or a custome, which if inveterate and long settled, though corrupt and vicious, is very hardly left off, and laid aside. Yet, as the Common Law (b) determines of a Custome, that if the rise, the original thereof can so be traced, as it can appear that it first began within time of memory, it is no Custome, nor shall obtain or prevail as a Custome; so in case, by tracing the present derivation to the well-head, I shall shew, together with the time, the error of its first original, not to be salv'd by long tract of time, (for, *Quod ab initio non valuit, tractu temporis non convalescit* :) I trust I shall not fail, nor fall short of what mine endeavours drive at in this matter; the weaning (I mean) of sober and judicious minds from an opinion so erroneous and ungrounded as this, I doubt not, upon trial, shall appear to be, though thus long continued, and in it self specious and plausible enough. However, being convinced in mine own judgement of the error, that I may not seem to swallow it for company, to the prejudice of truth, for that (I say) if for no other reason, I have resolved to protest against it: and yet, not to seem singularly affected without a cause, I shall not do it by a bare denial or dissent, as he that thought it sufficient for *Bellarmines* confutation to give him the

(a) See the addition to Dr. Casaubon's Treatise of Use and Custome.

(b) See Sir Ed. Coke, Institutes, part. 1. fol. 115. a.

ff. de Reg. Jur. l. quod ab initio.

(c) Duayenus;
Comment. in
Tit. de Pactis,
p. 49. 2.

lie, but by representing withall my inducements thereunto; I hope to put the matter out of doubt, that I have studied the Readers satisfaction herein as well as my own, by a learned mans (c) example, whose words in a like case, as very apposite in this, I shall here borrow for the close of my Apologie: *Esti me non lateat, (saith he) quam lubrica, plenaque discriminis res sit, quæ per tot secula, tot hominibus eruditi uno consensu probantur, rejicere velle, rationes tamen eas in medium adducere visum est, quibus adductus hanc interpretationem damnare ausus sum.* (Nor is this (I take it) magno conatu nugæ agere, the discovery and refutation of popular errors having been a task for many worthy pens, in cases of as small concernment as this perhaps may seem to be. To the matter then.

Whether the name of *Gavelkynd* was at first imposed with, or in respect to the nature of the land, in point of descent, or not, is indeed the matter in question. The common opinion (I confesse) affirms it, wherewith joyning issue in the negative, I shall endeavour to refute it by a double proposition; one negative, shewing that this is a wrong, and mistaken; the other positive, or affirmative, declaring what is the right and genuine construction of the term.

As for the former, though it carry with it a seeming allusion to *Gavelkynd* in sound, yet if we look advisedly into the true nature of it, we may, and peradventure must, conclude the etymologie from *Give all kyn*, *Give all-kynd*, or the like, unnatural at the least, and far fetcht, if not violently forc'd. For first, admitting *Kind* to signifie a male-child in the Dutch or Belgick tongue, as it doth not more than a female, being

being a word common to children of either Sex: (*Knecht* indeed with them, as *Gnibe* with our Ancen-
stours, the English-Saxons, is of that (d) significati-
on:) yet is not this kind of land so restrained, in point
of descent, only to the males, but that (as in the case
of land descendible at the Common Law) the females
in their default, that is, where the males are wanting,
are capable of succession to it, and in the same way
of partition with the males. Nay, is any of the sons
dead in the fathers life time, leaving a daughter behind
him, such daughter shall divide with her uncles in this
land: What then shall we admit *kind* to signifie
the issue, be it male or female: as indeed it doth ei-
ther, coming of the Saxon, or old English, *cennan*, or
cennian, *parere*, to bring forth, whence with them the
word or participle *þunneceop*, for the first begot-
ten, or first-born, *ancenne*, for the only begotten;
eopðeas, *terrigena*, one that is born, or bred of the
earth; yet is not this land so tied to the issue, but that
in default thereof, i. e. where that is wanting, such as
be in the transversal or collateral line (as in other lands)
descendible at the Common Law) may and do inherit
it: as (for instance) when one brother dieth without
issue, all the other brethren may and do inherit, as doth
their respective issue too, in case of their default, *jure re-
presentationis*, but with this restriction in the nephews
case succeeding with their uncle, *viz.* that the descent
is then *in stirpes*, not *in capita*. Neverthelesse, it goeth
not as the Irish (e) *Gavelkind*, to all the males of the
same lineage, (for in this, as in other inheritances, *pro-
pinqut excludit* (f) *propinquum*) nor yet neither to
all the next in one line of kined, as they pretend that

(d) See Xii.
anus Diction.
verb. *Knecht*.

Lamb. Per-
amb. p. 547.

Vid. Diction-
nar. nostr. An-
glo-Sax. m. 1.
voce. *ancenne*.

one but (1)
sch. m. 220.

(e) Davies
Reports, Le
Irish Cust de
Gavelkind,
fol. 49.

(f) *Bracton*
de acquiren-
rer. dominio,
fol. 64. 2.

are

are for gife-cal-cyn, taking cyn to signifie kindred, as indeed it doth, for then brothers and sisters both, being alike neer in degree, should equally inherit (a thing it seems allowed by the old German custome, wit-

(g) De morib. Germanor.

(b) 1. inter filios. 1. famil. hercif. 1. si quis à liberis, ff. de lib. ag. nosc. 1. si major. in ff. l. communis divid.

(i) Lib. r. Feud. tit. 6. Parag. 2. & ibi Notom.

(k) Ll. Hen. 1. c. 70. Glauvil. li. 7. c. 3. Bracton, fol 65. a.

(l) And another in the Appendix, Scriptura 9.

nesses what we have from (g) *Tacitus, Hæredes successoresque sui cuique liberi*, &c. not restraining the succession to the male-issue, as neither doth the (b) Civil

Law:) whereas we know, that as by the (i) Feudal Customes abroad, where males are, the females are excluded from succession, so by the Common Law of

(k) England, women (or females) shall not partake with males, according to that rule laid down in the Statute called *Prærogativa Regis*, cap. 16. *Fæmina non*

participabunt cum masculis, which (by the way) is understood onely of such as are in equal degree. But

doth *cyn* or *kynd* here intend and denote a mans issue, the Gavelkynders children? What may we say then

to a conveyance of land in Gavelkynd to a Guild, or Corporation, aggregate of many, suppose an Hospital, (as an instance of that nature shall be produced

(l) by and by:) they are a dead hand, how then is the etymologie in that case justified? Where's the

kynd, the parties issue here, to make good the derivation? But since, by occasion, mention is made of such

a gift, or conveyance, to strangers from the proper issue or heirs, let me thus far further adde, that in case it

be called Gavelkynd, from *debitum vel tributum scoli*, i. e. due; or given to the issue, as some are of opinion,

how comes it then to passe, that, as before the Statute of Wills, Gavelkynd land might by deed, or other lawful conveyance (and that *Domino*, in this case *incom-*

petito, and *inuisa* too, contrary to the nature of what

with

with the Feudists is properly termed (m) *Fes* :) be freely given, or sold away from the heir by the custom to a meer stranger, (contrary to the old Common Law of (n) England, except in some few cases, as in Frankalmoigne, or in marriage with a mans daughter, a reasonable part might be given, with some limitations and distinctions between Land of Inheritance and Purchase :) as now since the Statute of Wills, (if not before, as some of late seek to perswade us, a matter which I shall reserve (o) *aliori indagini* :) it may be, and daily is by devise of will and testament, How is the next heirs right to this land preserved, when there is that freedome of giving, or devising it away ? Or how can this liberty & that etymologic consist ? Yet further, doth not Mr. *Lambard* somewhere (p) say, that no *Gavelkynd* partition could be challenged, but onely where the custome of division had prevailed, and that *Gavelkynd* was not tried by the manner of Socage-services, but onely by the touch of some former partition ? If so, no land then could properly be called *Gavelkynd*, wherein this custome of partition had not yet obtained : what shall then be thought of those new created Tenures in *Gavelkynd*, whereof untill the Statute of (q) *Quia emptores terrarum*, examples are very obvious and frequent in the old Records both of the Cathedral at Canterbury, and of the neighbour Abbey of St. *Augustines*, and elsewhere, affording many ancient grants of land in *Gavelkynd* ? to what original shall the name there be referred ? to any customable partition ? nothing lesse : for where can that be found in *Gavelkynd*-land of novel Tenure, for want of that competencie of precursory

C

time

(m) See *Pal-*
teius, de Feud.
li. i. c. 8. nu. 37.
p. 341.
(n) *Glanvil*.
lib. 7. cap. 1.

(o) See the 8
Proposition.

(p) *Perambul*.
P. 544.

(q) Anno 12.
Edw. 1.

time of them necessarily presupposed (so frame the custome in) who conceive the name taken from such accustomed partition? Moreover, if partition were the thing that gave name to *Gavelkynd*, then should all partible land wheresoever be so called: but there is in parts abroad (out of Kent) partible land not called *Gavelkynd*. *Ergo*, &c. For the assumption see the Stat. 32. Hen. 8. cap. 29. purposely made to change the customary descent of the land of Osweldbeck Soke or Lordship in Nottinghamshire. And what doth (r) *Bracton* intimate lesse in his *sicut de Gavelkynd*, *vel alibi ubi terra est partibilis ratione terra*? Adde hereunto, that the word, as to the main part of it, *Gavel*, frequently occurs in the old records of some manours out of Kent, sometimes simply, but for the most in composition; for example, *Gavel-erth*, *Gavel-ate*, *Gavel-lond*, *Gavel-man*, *Gavel-swine*, *Gavel-wood*, *Gavel-red*, &c. (of which more anon.) And shall the same thing, (contrary to that rule of Law, l. 1. ff. De rerum permutatione) *diverso jure censeri*? For I suppose none will render it there (being out of Kent, and where no *Gavelkynd* partition taketh place) *Gife-eat*. Nor will this derivation any better stand with *Gavel*, where it helps to the composition of some words here ased in Kent, in former times at least, besides that of *Gavelkynd*, such as are all or most part of those aforementioned, to which I may adde *Gavel-rip*, *Gavel-ate*, *Gavel-sester*, *Gavel-bred*, *Gavel-bord*, *Gavel-simber*, *Gavel-corn*, *Gavel-refter*, &c. whereof also I shall in-treat further by and by. Is it then (lastly) to be supposed, that the lands meer descent in this kind to all the heirs alike, supposing a plurality of heirs, was all the

(r) Lib. 3.
fol. 374. 2.

the regard those Ancestours of ours had to sway and regulate their judgement by, to whom the name, the term, doth owe its first original? Was that in probability ground enough to satisfie them of the congruity and suitability of the name to and with the nature of the thing named, as names we know should be? *Vix credo.* I doubt it for my part.

† Conveniunt
rebus nomina
sæpe suis.

In brief then, to recollect what hath been said : 1. If females are capable of this succession as well as males, where the male issue faileth. 2. If collateral kinred are capable thereof as well as those in the descendent line, where such heirs are wanting, (in both which kinds *Gavelkynd* land differs not from that at the Common Law:) 3. If Corporations may hold land in *Gavelkynd*. 4. If such land may be passed away to meer strangers from the right heirs. 5. If none may properly be called *Gavelkynd*-land, where an accustomed partition hath not made way for it. 6. If there be partible land elsewhere (out of Kent) that is not called *Gavelkynd*. 7. If *Gavel* (the fore-part of the word) found in some Records of land out of Kent, and of others in Kent, will not bear the derivation of it from *Gife-eal*, without absurdity. 8. And lastly, if names are to be imposed with respect to the nature of what is (s) named, then is *Gavelkynd*, after these mens premised derivation, in some sort a very scant, narrow, and partial, in other a most incongruous and improper term to expresse the nature of the land by. Surely, there was somewhat more peculiar to *Gavelkynd*-land, and of more note and eminencie in it, better serving to distinguish it from other kind of land, than this derivation of theirs seems to intimate, and which first gave

(s) Nomina
cum re consensu
sunt, Plato
de Sapient.

occasion to the imposition of that name upon it, which leads me to my other, the positive, or affirmative proposition, asserting the true sense and construction of the term, and shewing whence it was at first imposed, and afterwards continued.

Gafol, what
signifying.

Wherein I must confesse, Mr. *Lambard* was as happy to go right in the latter of his two conjectures, as he was before unluckie to misse of the right in his former, yet in this passively unhappy though, that the former, through the advantages afore-mentioned, wholly took, and was accepted of all, whilest the latter was received and embraced of none: but no great marvel, since, whilest some, through ignorance could not judge of, others haply for company, would not question so plausible a derivation. But to the purpose.

To such as are any thing vers'd in Saxon monuments, *Gafol* is a word very obvious, but varied sometimes in the Dialect, as being written now *gafol*, anon *gael*, here *gaful*, there *gael*. I shall give you a few instances where it occurs, and in what sense. Tribute mentioned in the 17 of St. *Matthews* Gospel, verses 24, and 25, as also in the 22 of the same Evangelist, verses 17 & 19, is in the Saxon Translation of the Gospels, turned *gafol*. In the 25 chapter of the same Gospel, at the 27 verse, it serveth to expresse what there in our modern English Translation is called, in some books, *advantage*, in other, *usury*, agreeable to that in the Saxon Psalter, Psal. 54. vers. 11. where *usura* in the Latine, in the marginal version or reading of the word, is rendred *gael*. *gafola* occurring in the first of King *Wihreds* Laws of Sir *Henry Spelmans* Edition, in the first Volume of the Councils, pag. 194, is of that learned

learned Knight expounded to us by *Redditus vel Pensiones*, as it is again in his Latine Version of Pope *Agatho's* decretal Epistle, pag. 164. of the same Councils, by *Redditus*. In an old Sanction of King *Edgars*, recited by Mr. *Selden* in his Notes upon *Admerus*, pag. 153. what is there in the Latine read *solitus census*, in the Interlineary Saxon Version we find rendered there *gepunclic gafol*. Hereunto I might adde heaps of instances taken from the Saxon Laws, the *Mare clausum*, and elsewhere, but I forbear to expatiate: and to be short, *Gafol* is a word, which, as *Gablum* in Doomsday-book, the skilful in the Saxon tongue, with Sir *Hen. Spelman* elsewhere, turn by what *Gabella* is expounded abroad, viz. *Vestigal, Portorium, Tributum, Exactio, Census*, in Latine, but in English, with *Verstegan, Tribute, Tax, or Custome*, to which with (f) Mr. *Lambard*, and (t) *St. Edw. Coke*, let me adde, *Rent*: witnesse, besides the former quotations, what occurs in an ancient will or deed (u) of one *Asbelwird*, the Donor of certain land at *Ickham* in Kent to the Cathedral at *Canterbury*, in the year of mans redemption 958. where you may read: *Defter þij dages Eadrið* gif he libbe it bpuce þið þone gaele þe hit t gecpeþen 17, þet rýnð v. punð, 7 eache gepe enne dag þepm into þan hýpen, 7 17 þanne xl. 7erþer eledþ, &c. And anon after again: *7 þið ðane geleke gael þe hiep binner gecpeþen 17, &c.* The former of which passages, under favour of the skilful in that language, I shall render thus in our modern English: *After his dayes, (or death) Eadrið, if he live, shall enjoy (or use) it, yeilding that rent which is imposed on it, that is, v. pounds, and every year (or yearly) one dayes farm (or victual) unto the*

Glossar. verb.
Gabella.

(f) Peramb.
p. 529.

(t) Instit. p. 1.
fol. 142. a.

(u) In Archiv.
Eccles. Cant.

t forte hepe.

Containing
four gallons,
so *Fleta lib. 2.*
cap. 13.

Convent, that is, xl (measures called) Sextaries of ale, &c. And the latter thus: With the same (or like) Rent that herein is appointed. Let me adde what in another like Record, both for time and place, occurs thus.
*And eftren hipe tpegre dage uo re apeeþiscop Eadriþe þerra, gif he lang libbe þanne hi, oðen hpo hiſ ætten gen- gle ðanne by, bude ſume of hipe fpenb þet lond fupþon on þar apeeþicopeſ gemæbe ofgon mage toþigten ſaue- le, oðen to oðen foneþeþbe, ſpo hit man þanne uinden mage piþþane apeeþiscop þet þanne libbe. That is, And after both their dayes (or deatbs) let Eadriþ the Arch-Biſhop, if he ſuruiue them, haue (or take) theſe lands, or elſe his Succeſſour for the time being, unleſſe ſome friend of theirs, by (or with) the Arch-Biſhops fauour, may con- tinue to hold that land at (or upon) the accuſtomed rent, or upon what other contract (or condition) may be had (or made) with the Arch-Biſhop then living, (or, for the time being.) I ſhall adde but one inſtance more from the grant of Bocking (a known place in Eſſex) to the ſame Cathedral, by one Ethelrich, in the year of Chriſt 997. And ic gan þento tpey re hibe þet Eadriþ ſauele tæche ſepe mid hialue punde. That is: And I al- ſo give thoſe two hides (of land) that Eadriþ renteth (or hireth) yearly for half a pound. So that to me it ſeems clear, that *ponere terram ad gablum*, is as much as to hire, or let out land by or for rent or farm, and by conſequence, *terra ad gablum poſita*, taken in it's proper and genuine acception, is land hired, or letten out to farm, or for rent. In the latitude of the word it com- prehends beſides, all cenſual, or tributary land, as alſo what we call cuſtomary land, (in that ſenſe wherein*
Conſue-

Consuetudines, Customes, denore (x) Services) and so takes in all Rent-service land, which with our Saxon Ancestours, who called the rent or service paid or done for such land, (y) *land-gavel*, and *land-gafol*, was, by a transposition of the syllables, called and known by the name of *gafollant*, or the like: (z) *būtan ðam ceople þe on gafollantbe sit. i. e. Except the Churle* (or Country-man) *that occupieth censuall land*, as one would say now, Except the Country Fermor, or the like. He seems by this to be properly *unlandagent*, i. e. one that had no land of his own, such a one as had, being called *land-agent-man*, i. e. *terra proprietorius*, a landed man, as the word is (I take it) to be rendred, not *Viator*, a way-faring man, or the like, as some (a) have guessed. But to keep us to our *Gafol*, within and under which term and notion, not only the generality of rent and customary, whether payments or services, was comprehended and comprised, simply; but what we at this day call Rent-corn, Rent-honey, Rent-barley, and the like, the special and particular rents and services, I mean, by the custome of some manors yeilded by the Tenants to the Lords thereof, though now for the most part turned into moneys, were in elder times, in composition, called *Corn-gavel*, *Hunig-gavel*, *Bere-gafol*, &c. Without impertinencie I hope, I shall here present the Reader with a list of as many of them, as with much content to my self, I have ransacked old Records to find out for this purpose, with an assay of mine own at their several expositions, and they are divisible into two sorts; the one beginning, the other ending with *Gavel*. Both of them follow.

(x) *Coke*, In-
stit. p. 2. p. 58.

(y) *Spelm.*
Gloss. in voce.

(z) *Lamb.*
Archaion,
fol. 45. cap. 1.

(a) *Spelm.*
Gloss. in voce.

Gavel.

	corne.	
	erth.	
	rip.	Wood-
	med.	Work-
	ore.	Swine-
	dung.	Corne-
	rod.	Peny-
	tymber.	Malt-
Gavel-	refter.	Lef-
	bord.	Leaf-
	fwine.	Hunig-
	wood.	Were-
	fefter.	Twy-
	werk.	Bere-
	noht.	For-
	fother.	
	bred.	

Gavel-corn.

Corn-gavel.

In the list of the Rents and Services reckoned up in a Lieger-book of the Church of Canterbury, as charged upon that Churches manour of Adesham in Kent, this in particular thus occurs: *Item de Gavel-corn 66. sum.* Doubtlesse it is the same with that in a composition made between the Abbot and Covent of St. Augustines at Canterbury, and their Tenants of Minster and Hengrove in Thanet, anno 19. Hen. 6. called *Corn-gavel*, and there thus described: *Et quod quatuor Swillinga & dimidia, & quarta pars unius Swillinga residua tenebantur & tenentur de pradiſtis Abbate & Conventu per fidelitatem & relevium, & per redditum & servitium vocatum Corn-gavel, viz. reddendo eiſdem Abbati & Conventui, & ſucceſſoribus ſuis annuatim, in feſto*

feſto S. Michaelis Archangeli, de qualibet Swillinga earundem 4. Swillingar. Quindecim quarteria & quinque buſchellos ordeſ palmaris, & 15 quarteria & 5 buſchellos avenarum, & de prædicta medietate & quarta parte unius ſwillinga ſecundum ratam portionis ordeſ & avenarum illas medietatem & quartam partem contingentis, deferend. & cariad. ad coſtas & expenſas prædictorum tenentium uſque ad granarium dictorum Abbatis & conventus infra monaſterium S. Auguſtini prædictum, vel per ſerviſium reddendi pro qualibet acra dictarum quatuor ſwillingarum in eod. feſto S. Michaelis octo denarios, & pro dictis medietate & quarta parte unius ſwillinga ſecundum ratam portionis illas medietatem & quartam partem unius ſwillinga de prædictis ordeo & avena contingentis, in caſu quo prædicti tenentes prædictum ordeum & avenam in eodem feſto in formâ prædictâ non ſolverint. Thus the compoſition, whereby it is apparent what Gavel-corn ſignifies, namely (as before was intimated) Rent-corn.

In an Accompt-roll of the Arch-Biſhop of Canterburyes manour of Reculver in Kent, anno 29. Edw. I. this ſervice, under the title of *Arura*, occurs thus: *Item reſpondet de xxxv. acris de conſuetudine arandi Gavelberſhe.* In an old Cuſtomal * of Gillingham manour in Kent, of about that age, I read thus: *Item ſunt ibi quinque juga, quodlibet arabit unam dimidiam acram ad ſemen frumenti, & ſeminabit, & herciabit, & dimidiam acram ad ſemen ordeſ, & herciabit, & unam virgatam ad avenam & herciabit & waretabit, dimidiam acram ad ordeum, & nihil recipient, & vocatur iſtud opus Gavelerſh.* This then (it ſeems) is a certain Tillage-ſervice, like the *arura* in *Bracton*, fol. 35. b. due:

D.

by

Cavel-erth.

* In Archiv. Archiep. Cant.

by the Tenant holding his land upon terms of plowing, &c. a certain quantity (more or lesse) of his Lords Demesnes, not alwayes performed in kind, but bought out and redeemed sometimes with money. *Et de 10. sol. de 10. acris de Gavelersb relaxato hoc anno*, quoth an old Rental *sans date* of the Arch-Bishops foresaid manour of Reculver. It was of some affinity, as with the French Poiçtovines *Biaus*, so also with that which Mr. *Lambard* calling *Benersb*, expoundeth by service which the Tenant doth with his cart and plough. With his plough indeed, and also with his harrow, but not (that I find) with his cart, it being a meer tillage-service, as *Gavelersb* is, & alwayes performed *precaris*, as the Frenchman saith, *precairement*, upon request and summons, (in aid, and for the help and ease, when need was, of other Tenants bound to do the like *de gablo*, i. e. as I conceive, *ex debito*, and without summons:) and with allowance of (more than regularly was afforded in the other (a) service) a coredy, i. e. diet, or vi-
 tual, (sometime called *Benebred*) during the employment. Glanvils *precarias carucarum forinsecarum*, lib. 8. cap. 3. may hence be understood. *Matthew Paris* in his History of England, pag. 895. of the last Edition, making mention of a *Breve inauditum*, (as he there calls it) i. e. an unheard of Writ, issued by *Hen. 3.* recites this as a part of it: *Similiter inquiratur de carucis precariis*, which by the learned Authour of the Glossary, at the end of the work, is thus illustrated: *Erant & precarie* (saith he, speaking of several sorts of Ploughs) *quas scilicet in necessitate aliqua eminentiori, colonus unus a proximo (b) precario mutuabatur.* Hence the phrase in many old Customals and Rentals
 of

Biaus. -
Benersb.

(a) *Et omnes tenentes de isto jure debent arare, berciare, seminare, de semine Archiep. unam acrem sine cibo, quia Gavelersb. Customal of Tenham manour.*
 (b) Should he not rather have said, *mutuabatur ab hominibus suis?*

of plowing this or that quantity of the Lords land by his Tenant, *de prece, de precaria, ad precariam*, and the like. In *precariis carucacum & in auxilio herciandi vj. fol. vij. den.* saith an old Accompt-roll (c) of Salt-wood manour. The meaning of such passages in records of that kind as this: *avant preces semel ad conredium (d) Curia, &c.* and the like may hence be pick'd out. It took name (this of *Benerith*) I conceive, of the Saxon *bene, postulatio*, as Mr. Lambard, and before him *Fornadensis*, translating the Saxon Laws, turn the word occurring in the title of the eighth of King *Ina's* Laws, as Sir *Hen. Spelman* doth by *Rogatis*, Concil. tom. 1. pag. 583. Whence (probably) *Fleta*, lib. 2. cap. 84. speaking of those Ploughs, calls them *Carucas rogatas*.

(c) In Arch. memorat.

(d) Customal of Monkton manour in Thanet.

A certain Service (the same, I take it, with *Bractons* Gavel-rip. *messura*, fol. 35. b.) undergone by the Tenants of some manours tied to reap their Lords corn for him, which if redeemed, or taken in money, was usually termed *Rip-silver*. Of the former, in the Customal (e) of Westwell manour in Kent, I read: *De consuetudine metendi xl. acras & dimid. de Gavel-rip in autumpno xl. s. vj. d.* And in another like record, I meet with the latter thus explained to our hand: *De sulinga de Wistable xvj. de Ripsilver, quia homines de Wistable solebant antiquitus metere apud Bertonam.* And as in Tillage-service, certain Tenants were bound to it *de gablo*, others *de prece*; and thence the one service called *Gavelerith*, the other *Benerith*; so for reaping also, there were some that held by *Gavelrip-service*, other by *Bedrip-service*, (the old Glossary at the end of *Hen. 1. Laws* hath it *Benripe*;) that done *de gablo*,

(e) In Armæ Eccles. Cant.

Ripsilver.

Bedrip. Benrip.

without any bidding or summons, and for the most part without coredy; this *de prece*, upon bidding or summons, and regularly with coredy: *In villa de Iskham* (saith the old Custumal of that manour of Christ-Church) *sunt xvj. Corarii, quorum quilibet habet v. acras, & ha sunt earum consuetudines: Ducunt brasium, &c. & quilibet tres preces, i. e.* (saith the old marginal Glosse there) *quando rogantur per servientem Curia, debent metere, sive aliud facere quod expeit Domino per tres dies, & si noluerint facere, possint artari, &c.* As I gave you some instances before of *Gavelrip*, so I might also of *Bedrip*; but, for brevity sake, I will onely refer you to that in *Sir Hen. Spelmans* Glossary, verbo *Bidripa*, which being barely mentioned there without exposition, may hence be understood. And as *Bene* in *Benerth* is of a Saxon original, so likewise *Bede* here in *Bedrip*; and indeed they are univocal, drawn (this) from the Saxon *biddan*, *petere*, *rogare*, and applied to this service upon the same ground that bysel, to a Crier, Beadle, Summoner, Bailiffe, so called from his office, which is to warn, summon, give notice, &c. as these Tenants were to be warned, summoned, in a word, bidden, to come and perform this service: *Et de Cxcix. operibus magna precaria provenien. de omnib. tenentibus Domini, tam liberis, quam nativis, infra dominium Domini, quorum quilibet domum habens de quo sumus exiit, invenies unum hominem ad magnam precariam, si ad hoc summonitus fuerit, &c.* as it is in Accompt (f) of the manour of Harwe, now called Harrow in Middlesex, anno 21. Rich 2.

A service of much affinity with the former. In an Accompt-roll * of Terring manour in Suffex, anno 11.

Edw.

Bidrip.

See Spelm.
Glossa. in Ec-
clius.

(f) In Archiv.
Archiep.
Cant.
Gavel-med.
* In Archiv.
memorat.

Edw. I. it occurs thus: *Consuetudo metendi quæ vocatur Gavelrip*, follows *Consuetudo falcandi quæ vocatur Gavelmed*. And anon after: *Et pro una septimana dum falcatur stipula quæ vocatur Gavelmed*. It needs no further opening.

A certain proportion of Rent-oats served in some-^{Gavel-ore.} time in kind, other while by composition redeemed with money. As to the former, (its payment in kind) I read thus in an (g) old Customal, (*sans date*) of (g) ^{In Archiv. memorat.} Southmalling manour in Suffex: *Borga de Wellingham. Operarii. Omnes isti operarii de W. debent reddere annuatim de qualibet virgata unum quarterium avena, quod dicitur Gavelote in xlma.* In an Accompt-roll of the same manour, I find a charge futable: *Idem respondet de octo quarteriis, quatuor bush. avena receptis de gabulo Customariorum de Wellingham.* And for the redeeming it with money, an old (h) Accompt, (*sans dat.*) of the (h) ^{ubi sup.} Abbey of St. *Augustines* manours of Swane and Borewaremerth in Rumney merth, furnish us with an instance of it thus: *Et de avena de gablo vendita iij. s.* Like to that in old (i) Accompt-roll of Gillingham (i) ^{ubi sup.} manour by Rochester: *Et de x. s. vj. d. de quinque quarteriis, duob. bush. de Gavelote de redditu venditis.*

A service (like to that spoken of by *Littleton*, under ^{Gavel-dung.} the title of Villenage) to carry the Lords dung out of the site of the manour, unto the land of his Lord, &c. whereof in an (k) Accompt-roll of Storham manour (k) ^{ubi sup.} in Suffex, of about Edw. I. time, under the title of *Consuetudines & servitia de omnibus Borghis extra boscum præter Suthram*, I read in the Accomptants charge as followeth: *Idem respondet de consuetudine extrahendi fimum debita per Customarios tenentes xxvij. virgatas,*

dimid.

dimid. & j. ferling. in Borgh de Gote, Middelham, Astone, Northlington, & Wellingham in una septimana post festum S. Michaelis cum auxilio Molmannorum, quod servitium vocatur Gaveldung. See the Grand Customier of Normandy, cap. 53. in fine.

Gavel-rod.

(1) *Ubi supra.*

What service this was, the place it self where it occurs sufficiently explains unto us, and that is an old Extent of the manour of Terring in Suffex, anno 5. Edw. 1. where under the title of *Virgataris operarii de Wadeherst*, we have it thus : *In borga de Wadeherst sunt xv. virgate, dimid. & j. firling terra native, quarum qualibet debet claudere unam perticatam sepiu circa curiam de Malling, & debet pro pollis & clausura quam facere solebat ad Natalem beati Johannis Baptista annuatim reddere j. d. ob. quod dicitur Gavelrod & Burghard, &c.*

Burgh-yard.

Gavel-timber.

(m) *Ubi sup.*

Certain Rent-timber to be used in repairing the Lords mansion-house, or some appertaining Edifice, and as some Records do specify it, *Rafters*. Whence in an (m) Accompt-roll of Norbournae manour in East Kent, anno 31. Edw. 3. as a part of the Accomptants charge there, I read thus : *Es de C.C. rafters de Gavel-timber, de redditu, quilibet de longitudine xiiij. ped. de quibus proveniunt de tenemento de Borewarsyle C. & de tenemento de Monyn den C.* Another like Roll of the same manour calls it *Gavel refier*. And much of the same nature was the next called *Gavel-bord*, whereof in the last cited roll mention is thus made. *Es de C.C.C. Gavelbordis de redditu, quilibet de longitudine iij. ped. dimid. unde, &c.* These rents and services were wont to be charged upon their Wealdish Tenants, such as occupied their Wood-lands. And so was the

Gavel-refrer.

Gavel-bord.

next.

And

And by an inversion of the syllables, *Swine-gavel* Gavel-swine
 A wealdish service (I say) signifying Rent-hogs, or
 Rent-swine, so called when paid in kind, (*Es de vsj. s.*
x. d. de iij. porcu de gablo venditis ad parocum de Maghe-
feld, &c. As it is in a roll (*n*) of accompts of Mayfield (*n*) ubi sup.
 manour in Suffex, anno 11. *Edw. 3.*) otherwise *Swine-* Swine-pa-
paneges, and *Swine-money*, and the like, when namely ges.
 they were redeemed with the peny, or with money, Swine-money
 which was usually paid at *Paroc*-time, that is, when
 the Lord, or his Bailiffe and Tenants met upon the
 place in the Weald, to hold a *Paroc*, a Court-like kind Paroc.
 of meeting, (whereof I have by me a record of some
 kept about *Edw. 1.* time) not much unlike the Forest
Swaine-mote, where (*inter alia*) and accompt was taken
 of this service in particular, and generally of what
 hogs or swine had been taken in to feed and fatten the
 year past, or the last Pannage or masting-time, and
 rent accordingly paid and received for the same. Hence
 I take it (from *Paroc*, I mean,) the name of that place
 by Bleane-wood near Canterbury, which we at this
 day call the *Paddock*, for the *Paroc*.

Sometimes written and called *Wood-lode*, *Wald-lode*, Gavel-wood.
 and otherwhile, by an inversion of the syllables, *Wood-*
gavel: a custome or service incident to some Tenants,
 to carry home their Lords wood for him. An old
 (o) Accompt-roll (*sans date*) of the Arch-Bishop of (o) ubi sup.
 Canterburies manours, in South-malling, hath this
 mention of it in the Accomptants charge: *Et de xviij. s.*
iiij. d. ob. de fine cariandi Gavelwood de consuetudine. It
 often occurs in like records of divers other manours,
 under that diversity of names.

A certain measure of Rent-ale. Among the articles Gavel-sester.

to be charged upon the Stewards and Bailives of the Church of Canterburies manours *infra Gantiam*, according to which they were to be accomptable, this was wont to be one: *De Gavelfester cujuslibet braci- braciati infra libertatem maneriorum, viz. unam lagenam & dimidium cervisia.* Another old Record calls it Tolfester in these words: *De Tolfester cervis. hoc est de quolibet bracino per annum unam lagenam de cervis.* as it is in an old book of the same Cathedral, amongst the rents of Assise of Halton manour in

being undoubtedly the same, in lieu whereof the Abbot of Abbington was wont of custome to receive that peny mentioned by Mr. Selden, in his learned Dissertation annexed unto *Fleta*, newly published, cap.8. num 3. and there (by some mistake, haply of the Printer) termed Colcester peny, for Tolfester peny. Nor differs it (I take it) from what in the Glossary at the end of *Hen. I.*

Laws is called *Oate-gavel.*

A service charged upon Tenants, for example, In Charing manour in Kent, an old (p) Rental whereof of Edw. I. time hath it thus: *Grenehelle Eadmundus filius Thoma. de Grenehelle de uno jugo debet, &c. --- arabit unam acram 6. pedes, & arabet unam acram, dimid. & 9. pedes, de Gavelwerk.* This admitting also of a transposition of the syllables, is somtimes found written *Werk-gavel*, in barbarous Latine, *Werkgabulum*, as in an (q) Accompt-roll of the Arch-Bishops manour of Tunebrugge (now called Tunbridge) of *Hen. 3.* time, and signified Rent-work, which was of two sorts, the one personal, by the Tenants person, which they called *Manuopera*; the other by his carriages, thence termed *Carropera*; and they both met (I take it) in Villeins called *Gaigneurs.*

Tolfester.

Oate-gavel.

Gavel-werk.

(p) Ubi sup.

(q) Ubi sup.

Manuopera.

Carropera.

Un

In an old Custumal of our Cathedral at Canterbury manour of Clyne in Kent, I find them thus coupled: *De Gavelnoht vel Gavelfother de Ofstrelend*. The latter seemeth to expound the former, shewing them both to import what at this day we call Rent-fodder: the latter word in which composition cometh (as I suppose) of the Teutonick *Voeder*, or the German *Futer*, which we at this day pronounce *Fodder*. Of the Feudists it is called *Fodrum*, to whom I refer such as desire a further explanation of the term, wherein the learned *Hotoman* (I take it) is more copious than the rest, in his Commentary *De verbis feudalibus*, in voce. Let them also have recourse to our learned Glossarist, in verbo *Fodrum*. Fodrum.

In the Custumal of the same Churches manour of Chatham in Kent, it occurs thus: *Allocantur per annum pro Gavelbred ad herdemet. iij. sum. dimid.* It is the same (I take it) which I find elsewhere thus expressed: *In pane ad Gavelbred, de consuetudine arantium & metentium, ij. sum.* So an Accompt. roll (r) of Charing manour in Edw. 1. time. Nor is it probably any other than what in the Custumal (f) of West-Farlegh manour in Kent is termed *Averbred*. *Allocantur per annum pro averbred, iij. s. ij. d.* It seems to be a proportion of food or victual allowed to the baser sort of Tenants, such as the *Custumarii*, *Cotarii*, *Villani*, and the like (the *Gaigneurs*) towards their coredy, or sustentation, during their employments in the Villein-services of their Lords, such as those reckoned up by the Author of the *Mirroir*, chap. 2. sect. 28. where he saith: *Et ascuns per villeins customes d'arrer, over, charrier, sarclir, fauchir, scier, tasser, batre, ou tielx autres man-*

(r) Ubi sup.

(f) In Archiv.
Eccles. Cant.
Averbred.

Gaigneurs

ners d' services, which were not alwayes attended with such allowance; whence my Authour goes on, adding, & *ascun foits sans reprise d' manger*. And thus far of the particular rents and services, whose names begin with *Gavel*, to which I might adde that of *garol hytel*, occurring in the Laws of King *Ina*, cap. 44. Now to proceed to those ending with it.

Wood-gavel.
Werk gavel.
Swine-gavel.
Corn-gavel.

Of which the first four, (*Wood-gavel*, *Werk-gavel*, *Swine-gavel*, *Corn-gavel*) having their several expositions in their proper places, *viz.* in the former list of services, whose names begin with *Gavel*, I passe from them to the rest of like termination.

Peny-gavel.

In the Conquerours, and some succeeding Kings Charters, made to St. *Augustines* Abbey at Canterbury, the present service occurs by the name of *Gabulum denariorum*, the tithe whereof here excepted from these, was elsewhere granted unto other Monks, whereof see Mr. *Seldens* History of Tithes, pag. 321, 330, 331. It was a rent usually reserved and paid in money, witness the mention and description of it without composition, between the Abbat and Covent of St. *Augustines* and the men of Thanet, whereof before in *Gavel-corn*, and speaketh thus: --- *Tenentur de pradi-
ctis Abbate & Coventu & Pradecessoribus suis per fide-
litatem & relevium, & per redditum & servitium vo-
catum Peny gavel, viz. reddendo annuatim eisdem Ab-
bati & Coventini & eorum Successoribus de qualibet swil-
linga dictarum xliij. swillingarum in festo S. Martini in
hyeme decem & novem solidos & octo denarios, & de
pradicta quarta parte unius Swillinge in eodem festo an-
nuatim quatuor solidos & undecim denarios, & pro quali-
bet acra dictarum xxxviij. acrarum terra de Swilling-
land.*

land in eodem feſto ſecundum ratam portionis redditus eadem xxxviij. ac. as terra contingentes, &c.

In the Cuſtomal of the Church of Canterburies manour of Mepham in Kent, amongſt the reſt of the rents ſervices there, this occurs for one: *De xxj ſum. iiij. buſh. de Maligavel, &c.* It ſignifies Rent-malt, and is the ſame (I take it) that in another like Record (an old Rental of Eaſtry manour in Kent) is called *Malt-ſhot*, and thus expreſſed there. *De Malt-ſhot termino circumciſionis Domini xx. d.* But ſo called, I trow, when compounded for in money; otherwiſe, upon the ſame ground, *Malt-peny*, as the old Cuſtomal of the ſame manour frequently nameth it.

Malt-gavel.

Malt ſhor.

Malt-peny.

So called, peradventure, in relation to ſome greater rent or ſervice ariſing and paid out of the ſame land, that this, at ſome other part or ſeaſon of the year (I gueſſe hereat by an old (†) Cuſtomal of Charing manour, where indeed I found it ſo:) and ſo *Leſ-gavel*, (†) In Archiv. Archiep. Cant. quaſi *Leſſe-rent*, or *Leſſe-ſervice*. I take it to be the ſame that in the Cuſtomals and Rentals of ſome other manours, I find written *Leſyeld*, and *Leſgeld*; unleſſe it be miſtaken for the next, *Leaf-gavel*, thus occurring in an old Accompt-roll of the Church of Canterbury: *Et de xii. l. iiij. d. ob. de annuo redditu aſſiſ. cum Leaf-gabulo ad terminum S. Martini*; which I conceive to be the ſame with what in a like Record of Hathewolden (now Halden) manour in Kent, is called *Leſ-ſilver*: *Et de xvij. d. de Leſ-ſilver in Hathewoldum.* The old Cuſtomal of Tenham manour in Kent, calling it *Lyef-yield*, thus explains it: *Tenentes de Waldis non poſſunt arare terras ſuas ab equinoctio autumpnals uſque feſtum beati Martini ſine licentia. Et ideo, reddunt annuatim di-*

Leſ-gavel.

Leſ-yeld,

Leſ-geld.

Leaf-gavel.

Leſ-ſilver.

Lyef-yield.

midiam marcam ad festum S. Martini, siue fueris Pessona, siue non. Et vocatur Lyes-yeld. Whereby it seems to be a tribute paid by certain Wealdish Tenants, for liberty to plow their grounds during a certain season of the year, viz. *tempore Pessona*, which, because of some prejudice that might thereby redound to the Lord in his Pawnage, was not permitted without his leave.

Hunig-gavel.

(u) tibi sup.

(x) tibi sup.

Gabulum mellis, as the old (u) Rentals of Chistlet manour in Kent seem to term what some ancient Accompt-rolls (x) of Ottestord and other manours call *Hunigaved*, both one and t'other signifying Rent-honey.

Were-gavel.

(y) In Archiv.

Eccles. Cant.

Item de Weregavel vj. d. aliquando tamen plus, aliquando minus. Thus in the (y) Custumal of the Canterbury Cathedrals manour of Leisdowne in the Isle of Shepey. It seems to be a rent paid in respect of Wears or Kiddels, to catch fish withall, pitch'd and plac'd by the Sea-coasts, and, until *Magna Charta* forbade it, in some rivers too, whereof see further in Sir Hen. Spelmans Glossary, verbo *Kidellus*; and in Sir Edw. Cokes Institutes, part 2. pag. 38. and elsewhere.

Twy-gavel.

(z) In Archiv.

Archiep.

Cant.

In an (z) Accompt-roll of the manour of Reculver in Kent, anno 16. Edw. 3. this service, in the charge there, thus occurs: *Idem respondet de 814 & dimid. ped. clausur. hayag. fac. circa manerium, ex consuetudine, unde de Twygavel 200.* I meet with it elsewhere also, but with explanation no where. Taking liberty of conjecture, I conceive it to be some double kinde of service by the *Twy* prepoled, as elsewhere *Twysket* (an imposition upon the Tenants of Aldington manour by Romney marsh, for maintaining the Sea-coasts there, and

Twy sket

and other like defences against inundations:) is termed *Duplum*, as thus: *Compusus de duplo Walla; quod vocatur Twysket*. So the Accompt-roll of that manour in the sixth year of St. *Edmunds* Archbishoprick.

Is termed of our learned Glossarist, verb. *Berewica*, Bere-gafol.

by *Tributum hordeaceum*: elsewhere, viz. verb. *Gabella*, by *Redditus hordeaceus*. You shall finde in the 60th.

of King *Ina's* Laws, in Mr. *Lambards* Archaion. If it

were not Rent-barley, I should take it for the *Drince-* Drinceleam.

lean, occurring, as in the last chapter of the *Leges Pres-*

byterorum Northumbrensum, in Sir *Hen. Spelman's* Coun-

cils, pag. 502. So also in the 87th of King *Cnut's* Laws

in the Archaion, and in this latter place rendred in the

old Version in *Brampson*, (just as *Oryncelan*, mistaken

for *Drincelan*, in the old Glossary at the end of *Hen. 1.*

Laws) by *Re tributio potus*. If so, it seems to be the

same with what was afterwards called *Scot-ale*, where- Scot-ale.

of you may read in *Matth. Paris*, the Charter of the

Forest, *Bracton*, the Mitroir, and elsewhere. King

Hen. 2. in his charter to the citizens of Canterbury, ac-

quits them of it: *Ita quod* (saith he) *Viccomes meus*

Cantuar. vel aliquis alius Ballivus Scotalam non faciet.

It's sometimes called *Potura*, and was a contribution Potura.

by the men and Tenants towards a Potation, i. e. a

Drinking, or (as some yet speak) an Ale, provided to

entertain the Lord or his Bailiffe withall, coming to

keep Court, or the like, raised by a proportion or rate

(more or lesse) according to the better or meaner con-

dition. In an old (a) Custumal of Southmalling ma- (a) In Archi.

nour in Suffex, in that part of it intituled, *Bortha de* memorat.

feld, I read as followeth: *Item si Dominus Archiepiscopus*

fecerit Scotall, infra boscum, quilibet terram tenens

(a) Ubi sup.

Fildale.

Fildale.

Gild-ale.

For-gavel.

(c) In Archiv.
Eccles. Cant.(d) See the
Mirror, p. 16.

dabis ibi pro se & uxore sua iij. ob. & vidua vel Rotarius j. d. In the (b) Extent of the manour of Terring (to give you another instance) anno 5. Edw. 1. this Scotale-service is thus remembred; Lewes. Memorandum quod predicti tenentes debent de consuetudine inter eas facere Scotalium de xvj. d. & ob. ita quod de singulis sex denar. detur j. d. ob. ad potandum Bedello Domini Archiepiscopi super predictum feodum. Bracton saith, It is sometimes called *Fildale* (tol. 1 17. b.) which our learned Glossarist, in voce, correcting, reads *Fildale*, and is in some sort followed by Sir Edw. Coke, Institut. part 4. pag. 307. With the *Varia lectio* before Bracton, I should rather read it *Gildale*, and then indeed, as it comes neerer the other *Scot-ale*, so with that better answers to our present *Bere-gafol*, *Gild*, *Gafol* and *Scot*, being as it were *Synonyma*, and univocal.

Observed to be alwayes paid by the Tenant per *avail* to the mesne Lord, not to the chief, and thence called in some old records and deeds, *Foris-gabulum*, quasi extra (vel prater) gabulum quod Domino capitali debetur: just like the French mans *Surcens*. Will you have an example? John then the son of Richard at Horsfald, by his (c) deed, dated anno 1242. gives to Warin of Stablegate, a parcel of land, to be holden to him and his heirs, or to whomsoever he shall give, sell, or assigne it, (a clause without which, by the account of those elder times, land was not alienated from the proper (d) heirs:) paying to the Prior and Covent of Christ-church Canterbury (Lords, it seems, of the Fee) certain annuall rent and hens, and to the Feoffor and his heirs j. d. yearly, *de forgabulo*, &c. Some other instances of this kind might be added, but I must contract,

tract, passing over *Metegavel*, whereof mention is made in the old Glossary, at the end of *Hen. 1. Laws*, and there in Latine rendred *Cibi gablam*. Now a word or two of *Gavelet*. Metegavel,

This, I must tell you, was no Rent or Service, but betokeneth a rent or service with-held, denied or detained, causing the tenements forfeiture to the Lord; whence those words of *Fleta*, reciting the Statute *De Gavelleto* : *Et ex tunc vocentur tenementa illa* (not *Forschoke*, as in *Tottells* Edition of the Statute, followed by *Cowell* in his Interpreter, but) *Forusfacta*. See *Fleta*, pag. 119. Gaveler:
Gavelate.

It is taken (I confesse) of some for a Synonymy with *Gavelkynd*, and to import land letten for rent, or the like; and *per me licet*; the acception shall passe for me, as warrantable enough from the latitude of the term; but in the sence wherein the Statute (10. *Edw. 2.*) and other ancient records (all that I have ever view'd) do take it up, it seems to carry no other meaning than the deteiment of rent or service, whence that of (e) Sir *Edw. Coke* : *Gaveletum* (saith he; I adventure to correct it so, as supposing it corruptly printed *Gavelletum*) (e) Instit.
par. 2. pag.
204. is as much to say, as to cease, or let to pay the rent. *Breve de Gavelleto in London est breve de Cessavit in biennium, &c. pro redditu ibidem, quia tenementa fuerunt indistragibilia*. Thus he. In the Kentish Eyre of *Hervicres de Stanton*, recorded in a Manuscript of *St. Austins* at Canterbury, among the Pleas there concerning the Abbat and Covent, pag. 106. it occurs thus : *Es postea per quandam consuetudinem qua vocatur Gavelate usitatam in comitatu isto de terris & tenementis de Gavelkinde, pro redditibus & servitiis qua à retro fuerint de assadem per plures annos devenuerunt eadem terra in manus ejusdam*

(f) In Archiv.
Archiep.
Cant.

cujusdam Abbatis, &c. I have often met with the word in old Accompts of the Arch-bishops manours, from which I could present you with a cloud of instances, but for brevity sake, I shall trouble you but with one, and that taken from a (f) Roll of Ringemere in Suffex, in *Edw. 3.* time. *Item* (saith the Roll) *de defectu redditus cujusdam curtilagii jacens Gavellate quod fuit Alicia Hammerii, per annum in manu Domini iiii. d.* The fence, I trow, which I gave you of *Gavelet*, is by this time sufficiently asserted, which, if compared with the term it self, will appear very natural, being derived and compounded of *Gavel* and *let*, or *late*; a word (this latter) fetch'd at first (if I mistake not) from the Teutonick *Laeten*, signifying, as we are taught by *Kilianus* in his Etymologicke Dictionary, *linquere, relinquere, omittere, dimittere*, just (I take it) as our old Saxon *lætan* seems to do. The Germans have it *Lassen*, the French *Laisser*, we at this day *Let*. The termination is found in some other words now antiquated and obsolete as well as this: for example, in *Here slit*, which by the common opinion of Expositours, sounds as much as *armorum depositio*, or *exercitus desertio*, coming from *Her*, (saith *Lindenbrog* in his Glossary) *exercitus*, and *lassen, deserere*. Sir *Hen. Spelman* (I confesse) as to this latter syllable, is of another mind, writing it *slit*, and *slite*, and construing it by *fissura, disruptio, separatio*; and so will have *Here slit* to signifie *disruptionem exercitus*. For my part, under favour, I conceive, that between the latter syllable in *Here slit*, and the latter syllables in *Laghslite*, *Manslihte*, *Theofslibte*, and the like, there is this difference to be observed, that namely in the former, *Here slit*, the latter syllable is *lit*, (the

Here slit.

(the *f.* being here a note of the (*g*) Genitive case, and pertaining to the former syllable :) signifying *desertio, derelictio*; in the other, *stibte, stybte, or stite*, be-tokening, *ruptio, violatio*, &c.

(g) See But-
lers English
Grammar,
pag. 19, 34, &
35.

As Rent and Service in general was understood by Gavel-man. Gable, Gavel, &c. simply, and particular rents and ser-vices denoted by an application of it to particulars, as in the former compounds, so the man, the Tenant that paid the one, and performed the other, was suitably called of old, as in the 6th. and 22th. of King *Ina's* Laws, *garolgylda*, more of late, *Gavelman*: whence (for example) that passage in an (*b*) Accompt-roll of Terring manour in Suffex, anno 11. Edw. 1. *Et ac iij. s. vj. d. de incremento redditus de Simone Theodulfi, de una virgata & dimid. cum uno messuagio in Salwenton ---- traditis eidem Simoni hoc anno in servitium de Gavel-man, quantum Gavelman debet de tanto tenemento.* He was one of those (I conceive) that in a fore-cited Ex-tent of the same manour, are thus differenced and di-stinguished from other sorts of Villeins: *Villani de Terring qui vocantur Gavelmanni.* By an endorsement upon an old (*s*) Custumal of Charing manour, I find that Otteford manour had its *Gavelmanni*. And a-mongst the then Tenants of Charing manour, and the services charged upon them in that Custumal, I read of some there termed in one place *Gavelikendeyes*, in ano-ther *Gavelmanni*. The term, I conceive, may properly be given and applied to our Kentish Tenants in *Gavel-kynd*.

Gavel-man.

Gafol-gylde.

(b) In Archiv.

Archiep.
Cant.

(i) *Ubi sup.*

Gaveliken-
dyes.

One thing more I have to note, before I leave *Ga-ble, Gavel, &c.* viz. that where it comes into mention (as it often doth, in the *Reddendum* of deeds, or teoff-ments)

Mala.

White-rents,
Blanc ferm.
Black-rents,
Black maile.

(k) See *Spelm.*
Glossary, verb.
Ferma alba.
Cake, Instit.
part 2. 19. and
44.

(l) *Skenaus*
de verbor. signi-
ficat. verbo
Firmarius.

ments) with *Mala*, it there properly signifies, and is strictly to be taken for Services or Customs; as on the other side, *Mala*, there as properly betokens Rent, or Ferm, which being chiefly two-fold, was distinguished into White-Rents (*Redditus albi*, *Blanc ferm*) and Black-Rents, (*Redditus nigri*, *Black maile*:) that, paid regularly *in pecunius*, in silver, and therefore called *White*; this, *Black*, because, for the most part paid *in pecude*, or the like, say (k) some: if I might add an expression, I should rather *in blado*, or, if that be not full enough, *in annona*, comprehending all sorts of provision, wherewith the Lords table was furnished, and himself and family fed. And consequently, where I meet with a Tenant holding *per gablum & malum*, as there were many such of old, and I could instance in some, as in Charing, Monkton, Reculver Broke, and other manours in Kent, I should, if I were to play the Expositour, render it *per servitium & fermam, vel redditum*. The tenure continues to this day in Scotland, whence they (l) conserve *Firmarius* by a *Mail-payer*, a *Mailer*, or *Mailman*. The word (as I conceive) is originally British, coming of their *Mael*, which in the Welsh Vocab. is in Latine rendred *Lucrum, emolumentum, questus*, as *Maelio*, the verb, *Lucrari, questum facere*. The Saxons used it in the same sence as with the Latines, *veſtigal, stipendium*, whence this in the Chronicle of Abbingdon, *anno M L.* Jar ylcan geaþer he sette eall þa lictmen of male. Which the Latine Chronicle of *Flor. of Worcester*, and others give thus: 1051. *Rex Eadwardus absolvit Anglos a gravi veſtigali, &c.* Hence also thus in the same Chro. *Mlu.* 7 þær riþhð geþenbe to Legecearþe 7 ðær abben hroþa:

heopa mæter þe Ælfgar heom behet. I. (according to the same Latine Histories) *Classis Algari Comitis Leogeestram decessit, stipendium, quod eis promiserat, ibi expectavit.*

By this time, the Reader is satisfied (I hope) touching the true construction of *Gavel*, *Gafol*, *Gable*, or how-ever else he shall chance to find it written, both as the word is taken simply, and as it is used besides in composition, in each importing *Cens*, i. e. Rent, either in money, provision, or works. And being thus far advanced in the dispatch of our positive Proposition (*what is the true sense of Gavelkynd*) I must now desire the Reader, in the next place to observe and consider with me, that, as there are divers sorts of land to be found, both in this County and elsewhere, by the nature of their Tenure not *Censive*, or *Censual*, nor of the kind to pay or yeild *Gavel* (that is, such Rent, or Rent-service, whether in money, provision, or works, as ariseth from ignoble, base, and plebeian Tenures, in which onely *Gavel* is conversant) to those of whom such lands are holden, those namely holden in *Alodio*, in Frankalmoigne, (or Mortmaine, as called (m) also abroad, because yeilding the Lord no profit, as being in a dead hand) in Knights-service, in Frank fee, and the like; so is there also, such as that holden in *Socage*, or *Burgage* Tenures, or the like, (though free) which contrariwise is *Censual*, liable to Rent, in some one or more of the kinds premised. To distinguish therefore, if not generally what land is, from what is not, of *Gafol-gilden* nature, or of the kind to yeild or pay *Cens*, yet specially to put a difference between (what alone is properly and anciently called (n) Fee) *bile*.

Land Cen-
sual.
Land not
Censual.

(m) *Hotoman.*
de verb. Feu-
dal. in verb.
*Manus mor-
tua.*

(n) See *Spelm.*
Glossary,
verb. *Feudum*
scutiferum, &
Feudum igno-

(o) Cowels
Interpreter,
verb. Chivalry.
(p) Lamb.
Peramb. p.
345.

Knight-service land and it, under which double head is comprised the generality of our whole Countries lands, answering, as to that dichotomy of Chivalry and Socage Tenures, whereunto all the land in England in the hands of common persons is (o) referred, so also to that known distinction of their lands in Normandy (from whence, as some (p) surmise, we received our *Gavelkynd*, whereof more hereafter) unto *Fief de Haubers*, and *Fief de Roturier* (that is the Noblemans Fee, and the Husbandman or Ploughmans Fee:) for distinction sake, I say, of Censual or rented land, or Rent-service land, from what, like Fee properly so called, being holden *per liberum servitium armorum*, yeilded no Cens, Rent, or Service, whether in money, provision, or works; the former of the twain was called *Gavelkynd*, that is, (as Mr. Lambard rightly in the second of his fore-mentioned conjectures) of the kind, or nature to pay or yeild rent, or land holden, not properly in Fee; but as the Feudists are wont in this case to distinguish *contractu censuali*, as being letten out with, or under condition, to pay Cens or Rent, or with a reservation of Cens or Rent, like unto those in the charters of the Conquerour, and (his son) Hen. I. the one to Battell, the other to Reading Abbeyes, expressly called *Terra censuales*, and there opposed to Fee, witnesseth this provision occurring in each charter: *Terras censuales nec ad feudum dones, nec milites, nisi in sacra veste Christi facias, nec de possessionibus Ecclesie quicquam teneat aliquid feudally absolutum, sed ad censum annuum & servitium Abbati & monachis debitum.* See Clement Reyners Apostolatus Benedictinor. in Anglia, tract. 2. pag. 137. & 154.

Tenx censuales.

It is no simple word (*Gavelkynd*) but a compound of *Gavel* and *kynd*: the latter syllable whereof (to proceed on to that) cometh and is contracted of the Saxon *gecýnbe*, a word frequently occurring in the Saxon Sermon set forth and published by Mr. Fox in his *Acts and Monuments*, and again of late by Mr. *List*, as an Appendix to another Saxon piece, a Treatise of the old and new Testament; in the version or translation of the word they both concur, rendring it in our modern English (*q*) *Nature*. To give an instance or two: æfter þo sum *gecýnbe*, i. e. *after true nature*. Dit is on *gecýnbe*, i. e. *it is naturally*, and the like. It will peradventure be objected, that Mr. *Lambard*, in his *Perambulation*, pag. 495. meeting with the word several times in the Saxon will of *Byrhtic* of *Mepham*, in this often repeated passage there: innon þ *gecýnbe*, alwayes translates it, (after the old Latine version in *Textus Roffensis*) *within that kinred*, and in a marginal note against it, calleth it, *a kynd of gift in tale*. But, for reply, if I may have leave freely to deliver my sence, that version is not good: for, under favour, *gecýnbe* there importeth not (as that Translation would) *kinred*, but rather *kynd*, nature, sort, quality or condition, and consequently innon þ *gecýnbe* there, if rightly, is thus (I take it) and not otherwise, to be Englished, viz *in that kind*, or, after that nature, or, upon the same terms, or, with the same condition, having relation (if you mark it) to the tie upon the next precedent legacies, gifts or devises of other land, charged either with alms, or with rent, in way of alms, payable thereout by the Legataries or Devisees, for the Devisor or Testator his soules health. Had it been

Kind (in *Gavelkynd*) what signifying.

(q) As doth also Mr. *Whetloc* in his Latine version thereof in his *Bede*, pag 473.

Gecýnd misconstrued by Mr. *Lambard*.

otherwise, so namely that kinred had been intended in that place, I suppose the Donor or Testators expression would rather have been this: innon ꝥ cýnpine, innon ꝥ mægþe, innon ꝥ eneopurfe, or the like, words more proper (I take it) for such an expression than that of gecinde.

(r) *Lambard*,
Glossary be-
fore his Ar-
chaion, verb.
Præfatus.

To proceed then, and having thus at length discovered from what roots the denomination of our *Gavelkynd* first sprang, namely, from *Gavel* and *Gecynde*, let us now put, or couple them together: for whose better conjunction, and smoother pronunciation, former times have filed and pared off the former syllable from the latter word *Ge*, (a preposition much used of our Ancestours, the English Saxons, but for the most part (r) superfluously:) and left it a bare monosyllable, *kind*, which in the termination of many Adjectives, they used to write and pronounce *cunde*, as *popucunde*, *godecunde*, *eopcunde*, *ilsecunde*, &c. for secular, divine, &c. By means of which contraction (usual in words of this compound nature, as *Wapengetuce*, *Burg-gemote*, *Halig-gemote*, *Scire-gereve*, *Portgerete*, and such like, are at this day written and pronounced *Wapentake*, *Burgmote*, *Halimote*, &c.) the words being put together, are read *Gavelkynd*, and accordingly, or with very little variation, constantly written in records, deeds, and other monuments of times. Thus (for example) in a number of deeds and conveyances, which I have (s) seen recorded in the *Lieger-books* of the Cathedral at Canterbury, and *St. Austins* late Abbey there, phrased all of them after this manner: *Tenendum ad* (or *in*) *Gavelikendam*. Thus also in the inquisition cited and exhibited by Mr.

Lambard,

(s) Whereof
some copied
here, in the
Appendix,
Scriptu, 42,
62, 72, 82, 92.

Lambard, in his discourse of the Kentish Customes, at the end of his Perambulation, where the phrase or expression of *tenuis in Gavelkind*, is sundry times obvious. Thus again in an ancient deed of feoffment belonging to Heibaldowne Hospitall, whereby a parcel of land is given to the poor people there, *in perpetuam elemosynam, and to Gavelkind*, as the deed is phrased. The gift (by the way) is somewhat more remarkable then ordinary in several respects; wherefore, and the rather because it is but short, I think it not amisse to give it a full recital.

Sciunt presentes & futuri nos filios Wilbaldi, Herbwinum & Eilwardum, heredes suos Thomam & Paganum, concessisse infirmis de Herbaldune, unam acram & dimidiam terra, scil. Langenekre, cum fratre suo Wiberto infirmo in perpetuam elemosynam, and to Gavelkynd; Reddendo sibi duos denarios in die Sancti Nicolai. Hoc concedunt filia sue Basilia & Hawif.

From the tenour of this deed or conveyance, I collect and conceive; first, that this land was of the nature of what by the Feudists is called *patrimonialis, gentilitia, profectitia, hereditaria*, and that the Donors or Feoffors held it by descent, because their heirs do here concur and consent with them in the act of alienation, according to the ancient common (1) Law of England, whereby a man could not alienate such lands as he had by descent, without the consent of his heir, though it were otherwise in point of purchase, witnesse (besides the authorities in the margin referring to printed

(1) Glanvil, lib. 7. cap. 1. Cowel, Instit. lib. 2. cap. 20. num. 7. Coke, Instit. part 1. fol. 94. b. See Bracton, lib. 2. fol. 407. b.

ted books) the following passage in a Charter recorded in a Lieger of the often alleaged Cathedral at Canterbury of certain land (all which the party had) in Southwerk, given to that Church by *Norman le Wauiter*, in the year of Christ 1204. which thus speaketh: *Et quia pradicta terra de libero catallo, & proprio perquisito meo fuit, & non de aliqua hereditate parentum meorum, ideo Deum inde & S. Thomam Martyrem, & Sanctos Cantuariensis Ecclesia, & conventum monachorum ejusdem, heredem (u) meum legitimum inscribo, & hac mea carta in perpetuum constituo.* To which many more such like might easily be added from the same *Promptuarium*. The Feudists in this case distinguish between *Feudum novum & antiquum*, as may be seen in *Vulteius, de Feudis, lib. 1. cap. 10. num. 72.* In the next place, the Reader may please to observe with me, that as (x) *Britton* distinguisheth of a double tenure in Mortmaine, the one called *Almoigne*, or *Aumone*, simply, the other *Frank almoigne*, describing the former to be a gift in alms, but not free alms, because (saith he) a certain service is retained or reserved to the Feoffor, cap. 66. fol. 164. b. so this in hand is no alienation in Frankalmoigne: the Feoffers (it seems) not intending to give the land in that absolute manner, but, in token of Seigniorie, to reserve something of service to themselves, phrase their gift, not in *puram elemosynam*, or in *liberam elemosynam*, (one of which words, viz. either *pura* or *libera*, is (some say, others say (y) both) essential to the making it a tenure in Frankalmoigne, and to the excusing it from service) with which the next following words (*and so Garvelkynd*) could not have consisted; pure alms, or Frankalmoigne, excluding the return

(u) This seems to thwart Glanvil. lib. 7. c. 1. fol. 46. a. *Potest itaque quilibet, &c.* and Bracton, fol. 62. b. (x) Cap. 66. fol. 164. b.

(y) Bracton, 12. c. 10. fol. 22. b. Coke, Instit. part 1. fol. 94. b.

return of all but divine services and burthens; they phrase it not therefore, I say, *in puram*, or *liberam elemosynam* but onely *in perpetuam elemosynam*, and so *Gavelkynd*; by the former of these words, investing the Hospital with an estate in perpetuity; by the latter, and the *Reddendo* following, saving and reserving to themselves a quit-rent, as it were, *in signum domini*; that is, they reserved to themselves the service, and granted to the Hospital the *usum fructum*: or they granted the *utile dominium* to the Hospital, and reserved the *directum* to themselves. So that whereas *Bracton* and (x) others make mention of a tenure *in feodo quoad servitia*, & *non in dominico*, referring to the chief Lord; and of another *in feodo & dominico*, & *non in servitio*, relating to the Free-holder, the former may here be referred to the Feoffors, the latter to the Feoffees in this deed. But this *Parergon*. And now to wind up all (concerning this first Proposition) and not to enlarge with any further instances (wherein I might be infinite) for asserting this truth of our *Gavelkynds* derivation: *Gavelkynd*, we see, is the lands right name, whose Etymologie was never wrested to *Gifscalcyn*, whose signification of Censual, Rented, land, or Rent-service land, was never questioned till that within our fathers memories, one and all, by a kind of error, *jure veluti successionis*, transmitted to them, run a head in a wrong and mistaken derivation.

(x) Lib. 1.
c. 19. fol. 46. b.
Item 1 4. fol.
263. b. Coke,
Instit. part. 1.
fol. 1. b. verb.
See simple.
Eleta, lib. 5.
c. 5. parag. 26.

G PROPO.

PROPOSITION II.

The Nature of Gavelkynd-land in point of Partition.

D Ifollowing then *Gavelkynd* (as to the name of it) to be derivative from Partition, our next enquiry shall be, if (on the contrary) Partition ow it self to *Gavelkynd*, or to what other cause. Before I further enter into which research, or offer any resolution to the *Quare*, give me leave to preface it with certain rules, grounds and principles, in this case fit to be premised. You are then desired to take notice, that here in England, we acknowledge no land (no inheritance) partible or divisible, but what is so either (first) by Law, as in the case of Females, succeeding for lack of Males, whether in Knight-service land or Socage, which in this point differ not, or what (secondly) is so by Custome, as in our present case of *Gavelkynd*, and such like & no parcellers of land (I say), in point of inheritance or succession, but either according to the course of the Common Law, or by Custome, as termed by *Litton*, and our more modern books, the same in effect with what of elder time, in *Bractons* (a) language, are called, 1 *Ratione personarum*, 2 *Ratione rei vel terre*. In the next place, let me adjoyn what in this point of Partition is delivered by those two ancient and famous Sages of our Law, *Glanvill*, and *Bracton*, where of the former (b) speaketh thus: *Cum quis ergo hereditatem habens moriatur, si unicum filium heredem habuerit,*

Partible land,
and Parcellers
two-fold.

(a) Fol. 278,
374, 418.

(b) Lib. 7.
cap. 3.

erit, indistinctè verum est, quod filius ille patri suo succedat in toto. Si plures reliquerit filios, tunc distinguatur utrum ille fuerit miles, siue per feodum militare tenens; aut liber Sokemannus: quia si miles fuerit vel per militiam tenens, secundum ius regni Angliæ primogenitus filius patri succedit in totum, ita quod nullus fratrum suorum partem inde de iure petere potest: Si vero fuerit liber Sokemannus, tunc quidem dividetur hereditas inter omnes filios quosque sunt per partes aequales, (c) si fuerit Sucagium, & id antiquitus divisum: salvo tamen capitali messuagio primogenito filio pro dignitate æsneicie suæ; ita tamen quod in aliis rebus satisfaciet aliis ad valentiam. Si vero non fuerit antiquitus divisum, tunc primogenitus, secundum quorundam consuetudinem, totam hereditatem obtinebit; secundam autem quorundam consuetudinem, postnatus filius heres est. Item si filiam tantumquam reliquerit quæ heredem, tunc id obtinet indistinctè quod de filio dictum est. Sin autem plures filias, tunc quidem indistinctè inter ipsas dividetur hereditas, siue fuerit Miles, siue Sokemannus pater earum, salvo tamen primogenitæ filie capitali messuagio sub formâ præscriptâ, &c. Thus Glanvill, harmoniously followed, and almost verbatim of (d) Bracton, whose words on this argument are these: Si liber Sockmannus moriatur pluribus relictis heredibus, & participibus, si hereditas paribilis sit & ab antiquo divisa, heredes (quotquot erunt) habeant partes suas aequales, & si unicum fuerit messuagium, illud integre remaneat primogenito, ita tamen quod alii habeant ad valentiam de communi. Si autem non fuerit hereditas divisa ab antiquo, tunc tota remaneat primogenito. Si autem fuerit Sockagium villanum, tunc consuetudo loci erit observanda. Est enim con-

(c) The Scottish reading is, si fuerit Sockagium illud antiquitus divisum. See Reg. Majest. lib. 2. c. 17.

(d) Li. 2. c. 34. fol. 76. a. Vid. Flet. l. 5. c. 9. Parag. 15.

secundo in quibusdam partibus, quod postnatus praeferatur primogenito, & c. contrarius, &c. Hereunto let me sub-joyn in the third and last place, that common principle amongst us, and obvious in our books, *viz.* that prescription in *Gavelkynd*-land, as it is not (e) needful, so neither is it good. The reason is, whereof I pray take notice with me, that (as Mr. *Lambard* hath it) the custom of *Gavelkynd* is general, spreading it self throughout the whole Shire, into all lands subject by ancient Tenure unto the same, such places onely excepted, where it is altered by Act of Parliament, and therefore 3. *Edw.* 4. 8. and 14. *Hen.* 4. 8. it is said, that the Custom of *Gavelkynd* is (as it were) a Common Law in Kent.

Having thus premised, I shall now make it my endeavour to shape such a resolution or answer to the propounded *Quaere*, as may consist with these principles. And briefly, my answer here is negative, *viz.* that Partition doth not owe it self barely to *Gavelkynd*, either *ex vi termini*, by reason or force of that denomination, or *ratione rei*, from the nature or condition of the land; that property alone of the lands being *Gavelkynd*, or so called, not sufficing to render it partible. First, as for the name, the term, that that will in no wise bear it, is (I conceive) a thing sufficiently cleared in our Discourse upon the first Proposition, wherein the term is vindicated from that mistaken construction, by the error of latter times obruded on it, nor can such a derivation any way consist with the premised principles, Partition in *Gavelkynd*-land, from the term or denomination of it, being reducible to none of the there assigned causes of Partition. As inconsi-

stent

(e) Lamb. Per-
amb pag. 538.
Coke, up in
Littl. Sect. 265.

stent also with those causes and grounds of partition (that dichotomy or bipartite distinction of partible land into, 1 that by Law, and 2 that by Custome) is the attributing that property of partition in *Gavelkynd*, to the nature or condition of the land, there being no mention of any such third sort of partible land to be found in our Books. If it be replied, Yes surely; for

Objection.

Bracton is expresse for a partition *ratione rei vel terra*, in the places above quoted, that especially where he saith (as fol. 374. a.) *sicut de Gavelkynd, vel alibi ubi terra partibilis est ratione terra*. Such indeed are his

Solution.

words, and withall 'tis not to be denied, that such is the nature and condition of *Gavelkynd*-land; being not onely subject and liable to what the Civilians in their phrase are wont to call, *Judicium*, or *Actio familiaris* *herediscunda*; *De communis* (f) *dividundo*, the Feudists, *Adequatio*, *Paragium*, we in our language term it *Co-*

(f) See *Pul-*
berts Dialog.
part 2. cap. 6.
Of *Paiceners*.

parcenary Land-shifting, and the like; but withall so subject to it, as that partition doth alwayes accompany

land of that nature, and is indeed as inseparable from it as the contrary from Knight-service land. Whence

then is it? Before I answer, observe first with me for an answer to these passages in *Bracton*, that as before each

(g) Fol. 76. a.

of them, in one (g) place, we have his *si hereditas par-*

tibilis sit, & ab antiquo divisa, so likewise after them, in another (h) place, his *tenementum partibile inter plures*

(h) Fo. 428. a.
quem sequitur
Flita, lib. 6.
c 48. parag. 2.

coheredes --- & semper solet dividi ab antiquo. Where- by (confering place with place, for reconciling *Bracton* to himself) we may plainly understand what is

meant by those two meane or intervening passages in *Bracton*; namely, that not the base nature of the land, but ancient customes joynt concurrence with it, is in-

tended,

tended, and of him implied in each place, though not expressed, to render the land or inheritance partible. The like help, under favour, must be allowed *Gavelkind*, to reconcile his, *Secundum autem quod si quis liberum habens Socagium plures habuerit filios qui omnes ad hereditatem equaliter pro equalibus proportionibus sunt admittendi*, lib. 7. cap. 1. fol. 46. a. to his, *Si vero fueris liber Sokemannus, tunc quidem dividetur hereditas inter omnes filios, quosque sunt per partes equales, si fueris Socagium & id antiquitus divisum*, eod. lib. cap. 3. fol. 49. b. Briefly, were it so that *Gavelkind* land were partible by virtue either of the name or nature of it, without accession and concurrence of Custome, then all lands as soon as granted out in *Gavelkind*, whereof examples are obvious, and till the (i) Statute of *Quia emptores terrarum*, frequent, were *ipso facto* partible, contrary to that common and received ground, whereof before, that none are such, i.e. partible with us, (except that descending for want of males to females) but what are so by custome. As then not to the name, so neither to the nature of *Gavelkind* land alone, is such partition owing.

And is it then to Custome or Prescription? For the latter, 'tis clearly repugnant to what is before laid down by way of grounds or principles, it being a known rule in our Law, and obvious in our books, that Prescription in our Kentish *Gavelkind*, as it is not wanted, so neither is it admitted to come in plea. What say we then to Custome? Surely, since neither to the name or nature of the land, nor to Prescription, nor yet (neither) to the Common Law so diametrically opposite to it; to that, I mean to Custome, it is, or I know

(i) Anno 18.

Edw. 1.

know not else to what, that this partition mainly owes it self. Agreeable where^(k) is that of Mr. Lambard ^{(k) Perambul. fol. 1. 5. 4.} where he saith, that no Gavelkynd partition could be challenged, but onely where the custome of division had prevailed, and that, Gavelkynd was married by the manner of the *Socage* services, but onely by the cause of some former partition. But if so, then an objection here meets us resolved into a question thus, What shall then be said to Gavelkynd land of novel Tenure, upon the grant of lands, till then happily holden in Demesne, to one or more persons in Gavelkynd, as was usual before that Statute of *Quia emptores terrarum*, and until when a man might create in his land what Tenure he pleased, granting out (as ^(l) Bracton hath it) in Socage, ^{(l) Fol 36. a. and fol. 48. a.} what he held in Knight-service, and *e converso*? what, I say, shall we resolve concerning the point of partition here? since no particular custome or usage of partition had ever took place, to give to such division either foundation or precedent. We are here (me thinks) threatened with a Dilemma: for either the land was not partible, and why then called Gavelkynd? or, if partible, yet not by custome, being but newly turn'd from some other Tenure into Gavelkynd, and wanting both Time and (the daughter of it) Usage, (the ^(m) essentials of a ^{(m) Coke, In- str. part 1. fol. 110. b. and fol. 113. b.} custome) to render it partible that way. Here then is work for an *Oedipus*, but the resolution of the main doubt, to which I will now more closely apply my stile, will at once clear both.

Truth is then, that 'tis neither from Custome alone, nor yet from the nature of Gavelkynd land alone, that this partition springs, but partly from the one, partly from the other, and so from both together. It must

be granted that *Gavelkynd*-land, *ex sui natura*, is partible thus far, and in this sense, that by an inherent quality, it is capable of partition by Custom; that indeed may and doth render it partible, as Knight-service land properly it cannot, by reason of a repugnancie thereto in the nature thereof: but in this respect it differs not from Socage land in general, which by the nature of it, is capable of partition, and by Custom may be, and in many places *extra Cantium* is partible, where the plea (I take it) ought to run, *quod terra illa à toto tempore, &c. partibilis fuit. & partita*, agreeable with that of *Glanvill*, *si fuerit Socagium, & id antiquitus divisum*, which *Bracton* seemeth somewhat more fully to explain by his, *si hereditas partibilis sit, & ab antiquo divisa*. Now then, *reddendo singula singulis*, that such land is *partibilis*, i.e. partible, (the former part of plea) is, in Kent, from *Gavelkynd*, elsewhere, (in particular manours at least) from Socage; that it is, or rather was *antiquitus partita*, i.e. anciently parted (the pleas latter part) is from Custom or Prescription: Partition in the mean while in our *Gavelkynd*, being but a single property or branch thereof induced by Custom; the term in its full latitude comprehending all other properties accompanying land of that nature and tenure, such as *Dower of the moiety*, *Suffering for felony without forfeiture of estate*, and the rest contained in the Kentish Customal, as properly depending of *Gavelkynd* as partition doth, and in respect whereof the land may as well be called *Gavelkynd*, as because of Partition.

Objection.

But admitting Socage-land to be generally, by the nature of it, *consuetudine mediante*, capable of partition, as well as *Gavelkynd*, how comes it then to passe (will

(will some say) that this partition-property is more appropriate to it than Socage-land in general, and that they so much differ in their terms? From the agreement of the Kentish-men with the Conquerour, saith the common opinion, I shall answer that anon. In the mean time, said we not but now, that Custome is the thing whereto we owe this partition? And if so, why then seek we any further after its original? Customes, we know, cease to be Customes, when once they can be traced to their first beginnings, it being the main essential part of a Custome to be of an unknown rise. But be it so, that Custome carries such a stroke here, what kind of Custome is it, or how shall we find such a Custome for it, as may consist with *Gavelkynd*-land of novel Tenure, whercof before so often? *His labor, hoc opus est*, here's the point indeed. Why, in short it is no other than a custome generally spreading it self throughout the whole Countrey in land of that nature. What elsewhere, I mean in other Shires and Counties, they properly call by the name of Socage, whether free or base, we here in Kent are wont to call by the name of *Gavelkynd*: or if you please (in *(n)* Mr. *(n)* *Peramb. Lambards* expression) all Socage-service here properly so called, is clothed with the apparel of *Gavelkynd*, and under it, in a large acception, is understood all such land within the County, as is not Knights-fee, or Knights-service land, the term serving here, as that of Socage elsewhere, to contradistinguish it from Knights-service land, as *Fief Roturier*, or rather *inheritance Roturier* (all other being improperly and corruptly called *Fiefs*, or *Fee*, that is not holden *militia gratta*, the ground of all *(o)* Fees) is used in Normandy to distinguish

Objection.

Solution.

P. 145.

(o) *Hist. de Feud. l. 2. tit. 5 a. parag. 1. Item Disput. c. 5. Spelm. Gloss in Feud. l. 1. tit. 1. p. 160.*

rence that from *Fief de Hauvert*, or *Noble Fief*. Now into all land of this kind, by a general or universal custome of the whole County, hath this property of partition been introduced; insomuch, as what land was granted out in *Gavelkyn*, by such as before held it in *Demesne* or the like; as, for want of time and usage, it had no particular custome introductive of that property of partition, so neither did it want the same, the generality of the Custome extending it self to all Censual land, or land letten out for Cens, and sufficing to render it partible, as occasion should be offered, though but newly dimised. To this purpose (p) Mr. Lambard: *Alibonh* (saith he) *it were so that the land were never departed in deed, yet if it remain partible in nature, it may be departed whensoever occasion shall be ministered.* Granted out, I say, and holden in terms for Cens, conceiving a necessity of that or the like expression in the *Habendum*, or other part of the grant, to make it capable of this and the other properties incident to *Gavelkyn*, not intending here the very numerical word or term (*Gavelkyn*) but that or some other of equivalent sence and signification with it, for example, *Reddendo* such or such a sum *de gablo, de censu*, and the like (whereof, for illustration sake, expect some copies of old grants in the (q) Appendix to this Discourse.) These indeed, & such as these, were the more usual expressions in elder grants, that of *Tenendum in Gavelkyn*, & the like, being sought of me in vain before H. 1. dayes, nor afore-time doth the term occur in any writing or monument whatsoever, save onely in this passage in *Spot* (St. *Austins* Monk and Chronicler at *Canterbury*) who saith, that anno 1063. (Abbas) *tradidit*

certam

(p) Peramb.
pag. 536.

(q) Scriptu.
167.

terræ de Dene in Gavelkende Blakemanno & Alhelredo filiiu Britthmeri. But from *Hen. 2.* dayes downwards, it is obvious in many grants of land recorded and extant in the Liegers of Christ-church Canterbury, the late Abbey of *St. Austins* there, and many other of the Kentish religious houses, until about the time of that

(r) Anno 18.
Edw. 1.

(r) Statute, *Quia emptores terrarum*, which forbidding the letting out of land by any man to be holden of himself, and consequently cutting off all new Tenures, and the creation thereof, stopped the current of all such grants of land in *Gavelkynd* for the future.

That such an expression, as *Tenendum in* (or *ad*) *Gavelkynd*, or the like, was necessary to render the granted land partible, after the custome of *Gavelkynd*, without the help of Prescription requisite in partible land elsewhere out of Kent, may in part appear by a Record of a controversie happening now full 400 years agone, between one *Burga*, sometime the wife of *Peter de Bending* Plaintiffe, and the Prior and Covent of Christ-Church Canterbury, Deforciant or Defendant, touching the moiety of the manor of *Well*, by them granted to her said husband *ad feodi firmam*, challenged by her

(s) *tanquam francus bancus suus*, which controversie was debated and decided in *Eire*, and is recorded in the Liegers of that Church, from whence I shall present the Reader with a copy of it, not unworthy his perusal in the fore-remembered Appendix, Scriptura 5. Neverthelesse, it will here I think be necessary, that we distinguish times: for what at first in Kent was only partible, because of the Tenure in *Gavelkynd*, I perswade my self was afterwards, in tract of time, partible, and did communicate with *Gavelkynd*-land in that

(s) See *Bracton*, lib. 4. tract. 6. c. 13. which laid to chap. 15. eod. tract. the instance there seemeth to be a Kentish case concerning a widow of *Graveney* (anciently written *Gravnes*) by *Feverham*,

(1) Peramb,
page 538.

property, by being Socage land, though not expressly holden in Gavelkynd, it sufficing at length to shew (as (r) Mr. Lumbard hath it) the Custome at large, and to say, *that the land lieth in Kent, and that all the lands there be of the nature of Gavelkynd.* By what mean this was wrought; or by what degrees our Socage land arrived at this universality of partibleness, is not so easily discovered. That the sundry favours of *Gavelkynd* custome should incite many to creep into it, and by one and one (upon occasion of the intestine troubles that ensued the deprivation of King *Richard* the second) to shroud and cover themselves under the safety and shadow of the priviledges that do wait upon it, is an opinion of some, whereunto I cannot subscribe, as conceiving no Tenures in *Gavelkynd* to be so late as *Rich. 2.* dayes, which this opinion would infer, with what consistencie with the (a) Statute of *Quia emptores terrarum*, made so long before, and prohibiting the creation of new Tenures, I cannot see. But to let the manner passe, the thing (the over-spreading the Countrey in proceesse of time with this Tenure) is very obvious and apparent, witnesse an ancient Statute (made anno 18. *Hen. 6.* cap. 2.) taking knowledge, that *There were not at that day within the Shire above xl. persons, which had lands to the yearly value of xx. pounds, without the Tenure of Gavelkynde, and the greater part of this Countrey, or well nigh all, was then within this Tenure.*

To proceed, ascribing this property of partition in *Gavelkind*-land to the custome of the Countrey, what shall be said then to the partible land (more or lesse) abroad in other Countieis: is such *Gavelkind*-land, and

So to be called, or not; or is it from *Gavelkynd* that such partition there obtains? I conceive not. For first, our Kentish *Gavelkynd* Custome, considered collectively, with respect to all its branches, is not to be restrained to this one particular property, but (as before is intimated) consists of many other as singular properties besides, and which may as well challenge a share and right in the Customs name, as may that of Partition, such as is *Dower of the Moety, not to forfeit lands for Felony*, and the like; and though in point of Partition it may be like ours in Kent, yet in other properties incident to our *Gavelkynd*, it might, and no doubt but doth differ from it. Besides, that such partible land elsewhere should be called *Gavelkynd*, will not stand with our premised grounds, excluding Prescription in *Gavelkynd* land, whereas in such places abroad, though haply not in whole Counties; yet in particular Manours, I conceive it's necessary, even in their *Gavel-londs*, whereof I find mention made in several manours out of Kent, as some in Kent, to shew, *quod terra illa à toto tempore, &c. partibilis fuit & partita*, the accustomed actual partition of it being there as necessary to be pleaded and proved, as its capability of such a property. Add hereunto, that if all partible land were *Gavelkynd* (rendred such by partition alone) then were (x) *Brattons, Sicut de Gavelkynd vel alibi ubi terra est partibilis ratione terra*, an improper expression. We are told that this Custome of *Gavelkynd* partition takes place, (hath done at least) in other countries, or counties besides Kent, and *Littleton* instanceth in North-Wales. But what custome, I pray? a custome indeed, like to that in the Scottish (y) *Socage* land, of partition;

(y) *Shenel*

Annor, in

Reg. Majest.

lib. 2. cap. 21,

& 27.

partition; that's true, and testimonies of it are obvious, such as, besides that of *Littleton*, *Statutum Wallie*, the Welch History, and some AGs of (2) Parliament. But still, I say, no *Gavelkynd*-custome, taken in its true, plenary and compleat acception, comprising all the properties of it obvious in the Customal. As then for other Countrey-mens communicating with us of Kent in the Tenure, I conceive it first came up, by way of imitation of our example, in Ireland especially, and amongst the Welch-men, in whose Vocabulary or Dictionary the word is sought in vain, as it is also in that old Statute which concerns them, (*Statutum Wallie*) where though mention may be found of a custome there obtaining of partition of their lands, like to that of our Kentish *Gavelkynd*, yet without any one word of *Gavelkynd*. And if perhaps it may be found in their deeds, charters, or other records, yet (as one (4) saith in a case not much unlike conditioned to this of ours, whose words with very little variation I shall therefore take up here:) *Suspiciari licet hanc vocem pluribus illorum chartis actisque publicis, non tam illorum quam pragmaticorum usu ac instituto invecam.* i.e. 'tis to be suspected that it had its imposition, and was first transmitted hither by our Lawyers, who borrowed the term to make use of it for illustration sake, like as of late (I am perswaded) the Parliament did in that Stat. 34. Hen. 8. cap. 26. where the term of *Gavelkynd* haply is but borrowed, to help describe and illustrate that partible quality there mentioned of the lands in Wales, which I am the more induced to conceive, because in a former Statute concerning Wales, namely that of the 27th of the same King, cap. 26. making mention of
 this

(1) See 21.
 Edw. 1. 34.
 Hen. 8. 26. &
 Girald. Cam-
 brenf. Itine-
 rar. Camb.
 lib. 1. cap. 7.
 By the way,
 how do our
 Britains claim
 descent from
 the Trojins?
 fifth with them
 the eldest son,
 by prerogative
 of primo-
 geniture, mo-
 nopolized the
 whole inheri-
 tance. Where-
 of see Mr.
 Seld. Jan.
 Angl. lib. 1.
 pag. 24. Vir.
 Rastbach.
 Hist. lib. 3.
 pag. 207.
 (2) Rover. Il-
 lustrat. Hist.
 Monast. S. Jo.
 Reomien. p.
 628. num. 168.

this partition, *Gavelkynd* is not at all remembered. In imitation then (as I conceive) of the Kentish-men, the generality of whose partible land of long time hath notoriously been known by that title, and whose lands alone of all the Counties of England at this day be of the nature of *Gavelkynd* of common (b) right, this (b) *Coke, In-*
name or term of *Gavelkynd* in lands elsewhere of like sit. part. 2.
condition in matter of descent, hath been taken up and fol. 140. a.
is retained.

By that which hath been said, I may be thought to *Objection.*
incline to their opinion, who hold that *Socage* and *Gavelkynd* are Synonyma, terms identical, and of one and the same signification here in Kent, and that consequently what land here is of *Gavelkynd*-nature, is of *Socage*-tenure; as on the other side, what land is of *Socage*-tenure is of *Gavelkynd*-nature. I answer, No: *Solution.*
for I require in this case, I mean to make *Socage* land here in Kent *ipso facto* partible, after the custome of *Gavelkynd*, that it be granted out and holden in *Gavelkynd* (c) expressly, or in terms equivalent, as I said before, yet with that distinction of times wherewith I there qualified it. Notwithstanding, I am not of their mind, who distinguishing between free and base *Socage* in Kent, make the natures of their descents divers; the free *Socage* (say they) descending to the eldest alone, the base falling in division between him and all his brethren. Thus (d) Mr. *Lambard* in the person of others; to help justifie whose distinction, with the inference upon it, he there exhibits an Inquisition taken after the death of one *Walter Culpepper*, making mention of divers parcels of land and annual rents holden by the deceased at his death, some in libe-

(c) As in the
Appendix,
Scriptu. 4, 6, 7, 8, 9.

(d) Peramb.
p. 8. 593.

rum feodum, others in *Gavelkynd*; the former of which, by the verdict of the Jury, was to go to the deceaseds eldest son (2) alone; the latter, in common amongst him and the rest of his brethren. Thus the Inquisition, which (as Mr. Lambard there follows it) cleerly distinguisheth free Socage from the *Gavelkynd*, interpreting, it seems, *liberum feodum* there by Free Socage, and it may be rightly; however I crave leave of dissent, and (as it is but fit) shall give my reasons: For my part, I never found Free Socage any where expressed by that term, or in Latine rendred *Liberum feodum*, nor perhaps to those of more diligence, and more conversant with our Law-records than my self, hath it ever occurred under that notion. Nor have I met with any Free Socage, as this here, not subject to the rendring of some kind of service, either in *denarius*, or otherwise. By *Liberum feodum*, I understand sometime *Feodum militare*, which is often in old Records called *Liberum feodum*. In a very ancient (f) Rental of Southmalling manour in Suffex, we have this title: *Liberi feodi*, and under it: *Godefridus Walensis tenet III feodos milit. in tenemento de malling, & quartam partem unius feodi apud Terring per liberam servitium armorum suorum. Willmus de Bransa tenuit apud Adburton unum feodum militis, per liberam servitium armorum suorum.* And so some others. Apposite here is that of (g) Bracton: *Notandum* (saith he) *quod in servitio militari non dicitur per liberam servitium, & ideo quia constat, quod feodum tale liberum est, &c.* Sometime also by *Liberum feodum*, I understand (what I conceive it doth principally denote unto us) *Frank Fee*, that is, by the Feudists definition, such *pro quo nullum*

(e) In which respect Free Socage is not likely to be here intended, since Glanvill never mentions Free Socage, but under the notion of partible land, as l. 7. c. 1. and l. 13. c. 11.

Liberum feodum.

(f) In Archiv. Archiep. Capit.

(g) Lib. 5. fol. 329. v.

nullum omnino servitium (b) præstatur, and therefore is of them reckoned *inter Feudastra*, or *Feuda impropria*. And such as this seemeth to be meant by *Liberum feudum* in that Inquisition, because it is there *in terminis* expressed to be holden (just after the manner of Frank Fee, by the precedent definition of it) *absque aliquo servitio inde faciendo*. And if Frank Fee, then in probability not Socage: for as all the land in the Realm (say our Books) is either *Ancient Demesne*, or *Frank Fee*, so none (say they) is to be accounted *Ancient Demesne*, but such as is holden in (i) Socage. Frank Fee then being opposed to *Ancient Demesne*, which is Socage, cannot it self be Socage. Nor will *Bractons* distinction of Socage into *liberum* and *villanum*, applied to that difference in Mr. *Lambard*, of free and base Socage, by which the one should consist of money, and the other of base services, be warranted (as himself there observes) from the ensuing Inquisition, some lands being therein denoted to be of *Gavelkynd*-nature, which nevertheless do yeild none other but money alone, and none there of that nature charged with works, besides that of Suit of Court, improperly called Works, as not coming under the notion either of *Mannopera*, or *Carropera*, to which double head all works of this kind are wont to be referred.

(i) *Cowell* interpreter, verb. *Ancient Demesne*, from *Fitzherbert*.

Hence let none perswade themselves, that *Gavelkynd*-land was not, or by its nature is not liable to Works: for albeit that 66. of King *Ina's* Laws in the Archaion, seemeth to counter-distinguish *Gafol*, and *Werk*, and though moreover *Gafolland* and *Werkland* occur in some manours our of Kent, as of a distinct and different nature, (yet both *servile*, and opposed to

Gafolland,
Werkland.

what there is called *terra libera*, denoting, I suppose, Free Socage) yet most certain it is, that both *Gablum* and *Opera* do often meet, and are found in *Gavelkynd*-land. Witnesse the old Custumal of Monkton manour in Thanet, belonging to the Church of Canterbury, mentioning the particulars of what servile works the Tenants there stood charged with for the 18 S wo-

(k) -- *terram
irium aratro-
rum, quam
Cautiani An-
glice dicunt
esse Swo-
lunge*, &c.
as in the
Charter of K.
Offa, in the
Antiquities of
Canterbury,
p. 111.

lings (so many plough-lands, I take (k) it) holden of the Monks in *Gavelkynd*. Witnesse also this passage in King *Johns* Charter made to *Hubert* the Archbishop, for the changing *Gavelkynd*-land into Knights-Fee, at large exemplified by Mr. *Lambard*, Peramb. pag. 531. *Xenia, Averagia, & alia opera qua fiebant de terra is-*

dem convertantur in redditum denariorum equivalentur. Witnesse in the third and last place (not to multiply instances in a case so clear) an Inquisition found after the death of *Isabella de monte alto*, widow, sometime of Orpington, recorded in a Lieger of that Cathedral, whereof expect a copy in the Appendix, Scriptura 10.

'Tis true indeed at this day, and time out of mind (haply from *Richard* the seconds (l) time) such servile works (properly called Villein-services) have been, as they still are, intermitted, or rather quite ceased; inso-much as all our *Gavelkynd*-land, in point of service, now differs nothing from Free Socage, as it stands described and defined of *Bracton*; being such *ubi fit servitium in denariis*, (to use his own words) all the Tenants burthen, his whole service, being onely *servitium crumena*, pecuniary, such as payment of money for rent, suit of Court, and such like; nay, in many grants of land in *Gavelkynd* that I have seen, I find no tie at all upon the Tenant, no covenant or contract between his

Lord

(l) See *Spelman* Gl. Hary,
verbo *Lazgi*.

Lord and him, to require of him any such base services, there being *ut communiter*, and regularly, a reservation onely of rent in money, suit to his Court, or the like: yet I must tell you (as a reason hereof, in my judgement) that, though *Gavelkynd*, in the genuine sence, sound land letten for *gable, cens, or rent*, consisting chiefly in *denarius*, (whence in an old (m) Customal of Eastry manour in Kent, I read: *In eodem manerio mutati sunt octo Cotarii pro Gavelkende. Medlesferm tenet unum messuagium, tres acras, quæ solent esse Cotar. modo reddit xl. d. de gable*, and so divers more, which haply will be better understood, if I add what occurs in an old Accompt-roll of the Archbishops manours for the year 1230. in Charing Bailives receipt: *Et de xiiij. s. iiij. d. de fine Cotariorum, ut Cotarie sue ponerentur ad redditum*;) yet commonly upon such grants in *Gavelkynd*, the Tenant paretd with such a sum of money to his Lord, in *gersumam*, i. e. in consideration of that grant, and by way of Fine, as may seem equivalent to the base services otherwise imposable and to have been charged upon that land, and upon the Tenant in respect thereof; or if not, probably, (as in *Gavelkynd*-land, by vertue of King *Johns* fore-mentioned Charter, turned into Knights-fee) he had his rent enhanced and augmented to an equivalent value of his services to be redeemed; the cause in chief of the excuse of *Gavelkynd*-men from base services of latter times, and at this day, being (I conceive) no other than the Tenants buying them out, and consequently the change of the same (as *Littleton* hath it of Socage in general) into money, by the mutual consent of Lord and Tenant, whereof expect some examples to be presented

(m) In Archiv. Eccles. Cant.

Gersuma.

in the Appendix, Scriptur. 11, and 12. In the mean time have here an instance or two taken from some old Accompt-rol's of the Archbishops manours of this and that summe paid & received for enfranchising the land from customes and services, and changing it into Knights-fee, whereof in the last-remembered Accompt-roll, and in the receipt of Ceiring (now called Charing) manour there: *Et de ij. s. ix. d. ob. de incremento redditus Thoma de Bernseuld de termino Sancti Johannis, ut terra sua de cetero sit libera de consuetudinibus per feodum militis. Et de xiiij. d. quad. de incremento redditus Thoma de Bending, ut terra sua sit libera per feodum militis, de termino S. Johannis.* And so some others there, as also in Maidstone and other Archiepiscopal manours, and such may well be reckoned among lands of that sort, which in a copy of the book of Aid, cited by (n) Mr. Lambard, are noted to be holden in Knights-service, *per novam licentiam Archiepiscopi.* But to return to our Gavelkynd, which if not extensive to Free Socage, they may seem to stand in need at this day of some other character (to keep them unconfounded) than Bratton in the definition and description of the latter doth propose, in regard the service of both equally consisteth in money.

To recapitulate now what hath been delivered concerning partition in Kentish Gavelkynd-land: It is (as hath been shewed) neither from the name, nor from the nature of the land alone, nor from prescription, nor yet from any particular custome, that this property there proceedeth; but partly from the nature of the land, and partly from custome, nor (I say) a particular one, but a general custome extended throughout the whole

(n) Peramb.
pag. 533.

whole County in censual land, or land letten for Cens, or (what is all one with it) *Gavel*, or *Gafel*, to say, holden in *Fief* (or Inheritance) *Roturier*, as called in Normandy, and other parts of France; the Antiquity whereof, and how beginning in Kent, and why more general there than elsewhere, shall be the argument of our next Discourse.

PROPOSITION III.

The Antiquity of Gavelkynd-custome, (in point especially of Partition) and why more general in Kent than elsewhere.



After *Lambard* (o) inclines in his opinion (o) *Peramb.* to conceive this custome brought hither ^{P²E 545.} out of Normandy by *Odo* (Earl of Kent, and bastard brother to King *William* the Conquerour) and that we received it thence by his delivery; an opinion inconsistent with the Custumal it self of his own Edition, the very close whereof (if it may be credited) layeth challenge to the custome before the Conquest. For my part I conceive it may carry an Antiquity far greater than the time of the Norman conquest, being probably as old (in the name I mean, I will not say in all the properties of it, though happily I may in point of Partition) as *Gafelland* it self, from which (if considered in the term) it as little differs in sence as in syllables; to what our Saxon Ancestours called *Gafolland*, their Successours, and we

(p) spot, in the
lives of the
Abbats of S.
Augustine at
Canterbury,
cited by Mr.
Lambard, both
in his Glossary
before his A-
chaion, verb.
*Terra ex scri-
pto*, and in his
Perambul.
pag. 28.

at this day (for a fuller expression of the nature of it) having added one syllable, and so calling it *Gavelkynd-land*. Yet I would not be thought of his (p) opinion, who would bear the world in hand, that the Commons of Kent continue their priviledges by means of a composition entred with the Conquerour at Swancomb. No, under favour, we ow them not to that, or any other such like specious stratagem, nor are behold- ing either to *Ssigand* the Archbishop, or *Egelsine* the Abbats policie to contrive, or to their and our Coun- trey-mens valour to compasse, their continuance for us in such a way. I am not so prodigal of my historical faith, as to cast or squander it away upon commentit- ious fables: for I account this no better, however swal- lowed of the vulgar, whom I dare not to encounter in any dispute about it, as despairing of successe, though using never so effectual convincing arguments to dis- ingage them in the belief of it, and therefore appealing from them, I shall apply my self to the more literate and judicious, by intendment not so tenacious of a spe- cious tradition, but that they can with patience both hear it questioned, and, if occasion be, refuted; not unwilling to desert it, if, upon trial, it may prove un- found and spurious, and accounting it as thank-worthy to discover an old errour, as to deliver a new truth, e- specially since truth is not more often, nor more easily, lost by too much altercation, than errour is contracted and continued by too little. I will not undertake, nor do I mean to make it my task here, to shew how it came to passe, that *Gavelkynd* is in a manner proper, and *Villanage* improper onely to Kent, no other County partaking with it, either in that degree of commonnesse and

To discover an
old errour as
acceptable, as
to deliver a
new truth.

and uuniversality wherewith Kent is overspread of the former, or in the immunity it enjoyes from the latter; the finding out the true cause whereof hath not escap'd my diligence, although my skill I confesse it hath. But, be that as it will, and albeit I cannot in the affirmative shew what was, yet in the negative, that this was not the means whereto we ow the continuance of our Gavelkynd-customes at and since the Conquest, shall be my next assay to prove, and that by shewing what more than suspicion of errour this Monkish relation (for such it is) deserveeth to fall under with men of unbiassed and disingaged judgements. But first, will it please you to hear the story it self, as it is already Englished by the illustrious Authour of the Illustrations upon the Poly-olbion, pag. 301. who there suspects the same as not of clear credit.

When the Norman Conquerour had the day, he took his journey towards Dover Castle, that he might with the same subdue Kent also; wherfore Stigand Archbishop, and Egellin Abbat, as the chief of that Shire, ob'e'ving that now whereas heretofore no Villeins had been in England, they should be now all in bondage to the Normans, they assembled all the County, and shewed the imminent dangers, the insolence of the Normans, and the hard condition of Villenage: They resolving all rather to die, than lose their freedoms, purpose to encounter with the Duke for their Countreys liberties. Their Captains are the Arch-^(q) Bishop and the Abbat. Upon an appointed day they meet all as Swanescomb, and harbouring themselves in the woods, with ^(q) boughs in every mans hand, they incompasse his way. The next day the Duke coming by Swanescomb, seemed to see with amazement, as it were a wood approach-^(q) ing

(q) Green boughs, as Mr. Lambard hath it: a likely matter, at that time of the year, being about November,

ing towards him, the Kentish men at the sound of a trumpet take themselves to arms, when presently the Archbishop and Abbat were sent to the Duke, and saluted him with these words: Behold, Sir Duke, the Kentish men come to meet you, willing to receive you as their Leige Lord, upon that condition, that they may for ever enjoy their ancient Liberties and Laws used among their Ancestours, otherwise presently offering war, being ready rather to die, than undergo a yoke of bondage, and lose their ancient Laws. The Norman in this narrow pinch, not so willingly as wisely, granted the desire: and Hostages given on both sides, the Kentish men direct the Normans to Rochester, and deliver them the County, and the Castle of Dover.

Thus Spot, St. Austins Chronicler at Canterbury, living under Edw. 1. he, I say, and onely he, and such others as of latter times write after his copy: for before him, and in that Interim of more than 200 years, between the Conquest and the time he wrote, no published Story, no Chronicle, no Record of any kind, Kentish or other, may be found to warrant the (r) relation; a matter the whilest so remarkable, as, if true, not likely to escape all our Historians pens that were before him, those especia'ly about the Conquest. Amongst which (s) *Ingulphus* silence is the more remarkable, since he is so particular and punctual in relating and recounting the Conquerours oppugners, and their proceedings. When afterwards Rochester Castle, kept by *Odo* the Conquerours brother, against *William Rufus* in the year 1088, was by him besieged (a thing of as small moment at least as this) why, all the Stories with one consent were full of it, particularly

(r) See *Camb-
dens Britann.
in Kent.*

(s) *Hist. of
Croyland Ab-
bey.*

larly *Malmesbury* and *Paris* (amongst other occurrences) tell of a much declined nick-name, wherewith those were threatned that should refuse to come to the Kings assistance in that action, which the former hath *Nidering*, the latter, *Nithing*, *quod Latine nequam sonat*, say both, and rightly, if it come, as I conceive it may, from the Saxon *nipe*, i. e. *nequissia, malitia*, as it is in several places found in their (1) Psalter; a nick-
 name this, of such infamy, as fastened upon the most detestable and barbarous Villeins, such as were guilty of despoiling and rising the dead, which the 83. of *Hen. 1.* Laws calleth *Weilreis*, a term (identical, I take it, with *Walarupa* in the *Legis Boior. tit. 18. cap. 3. parag. 1.*) which *Textus Roffensis* thus illustrates in a place: *pal-neaf is nipinger oðe. 3if hpa of facen pille eo þ mis eahta 7 feopnig sulbopenna ðe gena. i. e.* (according to the Latine version in *Formalensis*, where this Law occurs, as the 21th of those of King *Ethelred*, at Vane-ting:) *Wealreaf. 1. mortuum refare est opus nithingi: si quis hoc negare velit, faciat cum xlvij. Thagns plenè nobilibus.* This (of *nipinger oðe*) is that surely which the old Glossary (new set forth) at the end of *Hen. 1.* afore-said Laws, harps upon, in the word *Refare*, and is there glossed by *opus nithingi*, as also in the word *wealreaf*. But to return to our Story, that I mean of the siege laid to *Rocheſter-castle*, which though of as small, if not lesse, concernment than the other here in question, could find many Chroniclers to record it, and must this needs escape them all, till *Spot* had got it by the end? Besides, observe with me (what Mr. *Selden* there, and Mr. *Lambard* before him both note) his commixture of (u) a falsity about Villenage, q. 67. n. 3.

(1) Psal. 54.
 17 Psal. 51. 1.
 in marg. Psal.
 71. 8. in marg.

(u) Testis falsus in uno, red-
 ditur suspectus
 in omnib. Fa-
 rinat. de testib.

K

affirming

affirming it was not in England before that time, which is apparently false by choice of testimonies, both from our Laws and other Saxon monuments, so obvious as I will spare to repeat them, setting that aside until I have dispatched the main matter of the Story, the composition, I mean, between the Conquerour and the men of Kent, with the occasion of it, which as it wants the warrant of confirmation by other elder Historians, not onely silent of it, but agreeing in asserting an universal conquest, so in flat contradiction of it, we find cleer testimony in *Florentius Wigorniensis* and *Roger Hoveden*, of our Countie fellow-suffering with her neer and more remote neighbours of Suffex, Surrey, Hampshire, Middlesex, &c. in the devastations, depredations, and other miseries of a countrey invaded, subdued, and (at least in some parts) harried by the Norman Conquerour, immediately upon that signal victory of his over the English, at the place where afterwards he founded that Abbey, from the Battel there fought, called Battel-Abbey in Suffex. You shall have my Authours own words: *Interea* (say they, (x) having but newly told the Story of that fatal battel:) *Comes Guiselmus Suthsaxoniam, Cantiam, Suthamtunensem provinciam, Suthregiam, Middelsaxoniam, Herefordensem provinciam devastabat, & villas cremare, hominesque interficere non cessabat, donec ad villam qua Beorcham nominatur, veniret: &c.* To this let me add a passage from the Story of the same Spot, where, after mention made of an Annulry, or Rent-charge given to his Abbey, by one *Sulbarga*, the Lady of Brabourne, about the year 861, he subjoyns this: *Illum redditum* (saith he) *& jugum terra apud Horton,* &

Kent conquered by the Normans.

(x) *Flor. Wigorn.* an. 1066.
Rog. Hoveden,
fol. 358. a.

& terram de Hengestehele juxta Wiveltesburgum, Hugo
 de Mansford abstulit, cui & Episcopo Baiocensi Willielmus
 Rastardus fere omnes terras Cantiae contulit, contradicen-
 sibus monachis, sed minime praevalentibus. Now if the
 Conquerour seized almost all the Kentish lands, and
 gave them to his brother, the Bishop (y) of Bayeux, (y) See O. den
 Vital. ann.
 and Hugh Mansford, (as you may find further verified
 by Domesday book, with cleer evidence of the like
 distribution generally throughout the Kingdome,
 whence that of (x) Inguiphus: Deinceps ergo comita- (x) Hist. Croyl.
 tus & barones, episcopatus & praelatias totius terrae suis fol. 512. b. See
 Normannis Rex distribuit, & vix aliquem Anglicum ad also Eadm.
 honoris statum, vel alicujus domini principatum, ascen- Hist. pag. 6.
 dere permisit:) how is it likely that Kent should escape v. sus ergo, &c.
 or speed so well, as by that specious Story of the
 Swanescomb encounter and accord, the Monk would
 bear the world in hand? Truth is, by the way, the
 Harpies of those rapacious times (the Conquerours
 kinsmen and countrey-men) laid about them notably
 for the fattest morsels they could find in most places,
 out of Church-lands (a) especially: (tempore autem (a) See the
 praedicto Normannorum, quo Dux Willm cum suis ar- Epistle in the
 matis copis Angliam intravit, vastavit, penitus & sub- Appendix,
 egit, omnia in pradam data sunt, &c. quoth Gervase the Scriptur. 21.
 Monk of Canterbury) and what with force on the one
 hand, and flattery on the other, obtained so many, as
 at length the pressure gave occasion to the Religious
 of those times for a general complaint thereof unto
 the Conquerour, with petition for redresse, and a-
 mongst the rest, the Monks both of St. Austins, and of
 the Cathedral at Canterbury, particularly seem to
 joyn in the Remonstrance; whereupon (for the for-
 mer)

mer) the Conquerour directsa writ, brief, or charter to *Lanfrank* the Archbishop, &c. for redresse of what wrong in that kind had berided the place, of such tenor as you shall find in the Appendix, Scriptura 13. And for the Cathedral, besides a particular charter granted by the Conquerour to the Monks there, *Ut prædicti monachi potestatem habeant terras suas dandi & tollendi ubicunque eis melius visum fuerit, quicunque eas teneat*: &c. they shew a general writ of his to Archbishop *Lanfrank* and others, for the restitution and reseizing of whatsoever had been taken from the Bishopricks and Abbeyes all the Kingdome over, whereof it seems they had particular occasion to make use, both by their care to record it, (as an evidence much concerning them) in their Leigers, as also by the record they likewise there keep of the plea between their said Archbishop, and the foresaid *Odo*, at Pinenden, whereof, from the Records of the Church of Rochester, which it equally concerned, Mr. *Selden* in his Notes upon *Eadmerus*, pag. 19. hath given us a copy; a pregnant evidence for our present purpose in many respects. This last named Charter, because it may be the first that ere you saw of this nature in print, and may conduce to a right judgement of *Spots* Story, I shall advi-
sedly recite at large in the Appendix, where you shall find it, Scriptura 14. But (no longer to digresse) be further advertised (good Reader) that whereas by *Spots* relation, the Conquerour was opposed by the Kentish men, in his march through West Kent towards Dover, and after composition with them at Swanescomb, was by them conducted to Rochester, and put in possession of the Countie, together with
the

the castle of Dover; the very truth is, by the more credible relation of (b) *Gulielmus Pictavenfis* (a writer of the same time, and the Conquerours own Chaplain, followed by (c) *Ordericus Vitalis*) the Conquerour, after his victory neer Hastings, made not first to London, and then to Kent, but after settling his affairs about Hastings, presently took his journey towards Dover (d) by the way of Romney, where having avenged himself of the savage kind of Inhabitants, for the slaughter of certain of his men, by some mistake landing at that place, (of *Pictavenfis* called *Romanarium* for *Romaneium*, as of *Ordericus* rightly named) he thence advanced on to Dover; whither, though a numberlesse multitude of people had betaken themselves, as to a place, by reason of the castle, inexpugnable yet dismayed with the Conquerours approach, the place with all readinesse submitted to him, who, after eight dayes fortification of it, marching from thence, at a place not far from Dover, the Kentish men of their own accord came in to him, sware him fealty, and gave hostages for performance. Marching then onward, and understanding where *Stigand* the Archbishop, with the Earls *Edwin* and *Morcar*, and other English Nobles (who conspired to set up *Edgar Etheling*, King) were assembled, he made towards them with a strong power, and sat down not far from London; whence certain companies issuing out against him, he, with 500 of his Horsemen soon repelled them, forcing their retreat back into the citie, not without the slaughter of divers by the way. This action was followed with the firing of all buildings whatsoever behither the river (of Thames.) Passing over which,

(b) *Gesta Guliel. Duci*, &c. pag. 204.

(c) *Hist Eccles. lib. 3* pag. 501.

(d) Herewith concurrerth *Malmesbury*, fol. 116. b. where he saith, *Quicum & bellum Hastingsis victricis, & cast. li. Doffensis deditione terrorem sui nominis sparsisset*, (Conqueror) *Londonium petiit*, &c.

the Conquerour removed to Wallingford, whither Archbishop *Stigand*, and other of the English Nobility followed him, and deserting young *Edgar*, made their peace with the Conquerour, receiving him as their Sovereigne: whose example the Londoners soon following, rendred themselves also to the Conquerour, and (as the Kentish men had done) delivered him hostages; such, both for number and quality, as he required. Thus *Gulielmus Pictavensis* followed (as I said) by *Ordericus Vitalis*, a writer of, as it were, the same time. By which relation it is evident, that the Conquerour intending for Kent, did not set out (as *Spot* insinuates) from London or those parts, but on the contrary ere he went to London, made himself sure of Kent, by taking Dover castle, (the Lock and Key, as one (e) calls it, of all the Kingdome) and from thence, after the Kentish mens voluntary submission to him, marcheth towards London. Now, from the silent passing over most of these particulars in other writers, of and about this Authours time, all save onely *Ordericus Vitalis*, let none call the truth of them in question, since their undertakings were for compiling a more general Story, than that of the Conquerour alone, who therefore were more succinct and summary in their relations; advisedly (by their own confession) pretermittig many particular passages. *Ingulphus*, after a summary relation of the Conquerours acts at his first coming in, excuseth his brevity thus: *Summatim namque ac carptim victoriosissimi Regis gesta narro, quia secum sequi annuatim, passimque scribere gressus suos non sufficio*. Whereas, on the contrary, this Authour (*Pictavensis*) undertaking onely the acts and life of the Conque-

(e) Matth.
Paris, Hist. in
Hen. 3.

Conquerour, (whose Chaplain he was) sat himself to expatiate in all memorable occurrences. Besides, (which I cannot but observe, as tending much to the credit both of our Authour and his relation) although *Gemeitiensis* (a writer of the same time) balk the most of these passages, yet excusing himself also for his studied brevity, he refers the Reader to our Authour, for fuller intelligence, making mention of his Story (like as *Ordericus Vitalis* also doth) with great applause, in these words: (f) *Hæ per anticipationem breviter intimatis, ad finem gestorum Wilhelmi Regis Anglorum, & Ducis Normannorum, de quibus fastidio Lectorum compendiosè consulentes, quadam perstrinximus, veniamus. Si quis verò plenius illa nosse desiderat, librum Wilhelmi Prætoriensis, Luxoviorum Archidiaconi, eadem gesta sicut copiosè, ita eloquenti sermone assatim continentem, legat.* Of whom *Ordericus Vitalis* (g) further thus: (g) *Hist. Eccl. lib. 3. propè fin.*
Ipsa siquidem prædicti Regis Capellanus longo tempore exiit, & ea quæ oculis suis vidit, & quibus intersuerit, longo relato vel copioso indubitanter enucleare studuit.

Thus far then in way of refutation of *Spets* Story in grosse, or in the general; a meer Monkish figment, I conceive, politickly devised, and with a design to bring a perpetual obligation on the Kentish men to his own Abbey, as owing (forsooth) the continuance of their ancient liberties partly to a quondam Abbot of the place: even much such another, as that of the Devils attempt upon *S. Pancras* chappel to overturn it (whereof in the Antiquities of Canterbury, pag. 61) smelling too much of the Legend, and invented doubleesse for the greater glory of the Abbey.

Now

(i) Lamb. Per-
amb pag. 30.
Author Anti-
quit. Britan.
in viâ Sti-
gandi Archiep.

Now descend we to the result of the Story, and the inference upon that meeting, made by *Spot* and (b) his followers, which in short is, that hence, or hereupon Kent received her pristine priviledges, instancing (some of them) in *Gavelkynd* for one, and particularly that hence, as formerly Kent (participating in common with the whole Kingdome in that point) had no Villeins, so by that means from henceforth (by a singular priviledge above other counties) it never had any. Indeed, (which I note as adminicular to this assertion) among the articles by which the Auditours of our Cathedral were to take accompts of the Bailives of that Churches manours out of Kent, recorded in an old Lieger there, these are some: 1. *De Censariis Nativorum quod possint exire tenuram Domini ad laborandum & operandum extra, & statim post opera redire.* 2. *De finibus Nativorum. pro filiabus suis maritandis infra tenuram Domini.* 3. *De finibus Nativorum. post mortem patrum suorum, quod possint habere terras quas patres habuerunt, tenendas ad voluntatem Domini, secundum consuetudinem maneriarum:* Whereas in the like articles for the manours in Kent, not one of these occur; but, as if improper for the manours of that county, all are quite omitted, to the manifest confirmation of *Spot*s acquitting Kent of Villeins and Villenage. True, I confesse, nor can it be denied as to those dayes, the time I mean when those Articles were set on foot, which, judging of their age by their character, seemeth to be about *Edw. 2.* dayes: but that there were none at, or after the Conquest (the point in issue) is under favour an assertion little truer, if not fully as false, as that other of his concerning the composition with the Conquerour. For proof where-
of,

of, to say nothing of *Hubert* (the Archbishop of Canterbury in King *Johns* time) his acquitting both his own and the Monks possessions, amongst other burthens, from that of (i) Villenage, because possibly this priviledge might concern their possessions elsewhere, and not in Kent: I appeal to a writ of King *Edw.* 2. *anno regni sui septimo*, to the Assessors of a Tenth and Fifteenth in the county of Kent, in the behalf of the Abbat of *Spots* own Abbey (*St. Austins*) and his Villains, whereof you may find a copy in the Appendix here, *Scriptur.* 15. followed with another of a very rare deed or charter of about *H. 3.* time, taken from an ancient Manuscript Chartulary of the very same Abbey, now remaining with *Sir Thomas Cotton*, which I must confesse to ow to the courtesie of my late learned friend *Sir Simonds D'ewes*, cleerly shewing Villenage to have obtained and taken place in Kent, and even in our *Gavelkynd*; a Tenant to that Abbey of certain land in *Gavelkynd* doing homage to the Abbat there for the same, expressly as for Villenage, and covenanting to perform as much service to his Lord, as to the same Villenage appertained, as by the deed (which whether I should more value for it self, or for the hands sake that reach'd it to me, is with me some question) more fully may appear, *Scriptur.* 16. Add herunto, that the Laws of *Hen.* 1. cap. 76. make mention of *Villani* in Kent: *Differentia tamen Weregildum multa est in Cantia Villanorum & Baronum*. So that chapter is concluded. To ascend yet higher, in *Domesday-book*, and in the Kentish Survey there, *Villani* frequently occur, by which, If, after the common opinion of modern and some elder Lawyers, Bond-men (such as of

Villani in Kent.

(i) *Godwin*, Catal. of BB. in the life of *Hubert*.

(k) Cap. 3.
Sect. 28. pag.
169.

latter times and at this day we call Villeins) are not to be understood, but rather (after the (k) *Mirroir Cul-
tivers de fief demorants en villages uplande*; car de vill
est dit vilain, &c. or, in Fitzherberts expression: *Ba-
se tenant, qui se fait vilain service, mes ne fait pas vilain.*
i. e. A base Tenant, that doth Villein service, but ne-
verthelesse is no Villein; then, to put the matter out
of all doubt, know that besides *Villani*, you may with-
all find, and that in divers several manours too in that
Kentish Survey (particularly in the Bishop and Church
of Rochesters manours of Southfleet, Stone, Falkham,
Woldham, Trottesclyve, Snodeland, Halling, Fren-
dibery, &c.) expresse mention of *Servi*, which of all
hands is confessed to denote men of servile condition,
bond-men, or bond-slaves, *Villeins*. And take along
with you this note by the way, that the pretended com-
position in *Spot*, by which he will have Kent for the fu-
ture conserved in her immunity from Villenage, did
for many years antedate the time of this Survey, that,
pretending to the Conquerours first coming in, this,
not beginnings, at the soonest, untill about fourteen
years after. I might follow this with some pregnant
passages to this purpose, such namely as that in the old

(l) In Armar.
Eccles. Cant.

(l) Custumal of Ickham manour in East Kent: *Et isti
Cotarii nusquam capiunt auram nisi apud Ickham vel
Brembling*: such (secondly) as that in a like ancient

(m) In Ar-
chiv. Archiep.
Cant.

(m) Custumal of Tenham manour: *Qualibet Cotaria
tenet unum messuagium, tres acras, & debet metere 8 a-
cras, &c. Et facient quicquid serviens de manerio praece-*

(n) Penes Re-
gistrum Confi-
storii Cantuar.

peris: such (thirdly and chiefly) as that in the (n) will
of one Sir William Septvans Knight, sometime owner
of Milton neer Canterbury, dated anno 1407: *Item*

lego

Igo Adam Standerd, Thoma Hamonde, Roberto Standerde, Roberto Chiroche, & Johanni Richesforde servus & natus meus, pro bona servitio mihi ab eisdem facto, plenam libertatem, & volo quod quilibet eorundem habeat cartam manumissionis sigillo meo signatam, in testimonium huiusmodi meam ultimam voluntatis. I might add, that, what in confirmation of the probability of *Spots* Story is added, *viz.* that hereupon the King so stomached the Archbishop, as to put him by his place and office in his Coronation, hath no support or warrant from any Story of those times, all which, with *Gervasius Dorobornensis*, a Monk of his own Church, agree in the yeilding and rendring other reasons hereof, chiefly his being interdicted his Episcopal Function, for invading the See of Canterbury, *Robert* the Archbishop being yet alive, and undeprived, and holding it and Winchester both together: which is the more probable, because for the same reason four years before, *Wolstane* the elect of Worcester refused to be consecrated Bishop by him, and was sacred by *Aldred*, the Archbishop of York, as the Monks of Worcester and Westminster have it in the year 1062. But to keep to our Villenage, which apparently is traceable in Kent sithence the Norman Conquest. Nor indeed seemeth it to have been otherwise here (in this particular of Bond-men, or Villeins) in the times before the Conquest; witnesse (besides the mention of such in the (*) Saxon Laws of *Ethelbert*, *Lothaire*, and *Eadric*, all Kentish Kings) an old Saxon tripartite deed or charter purporting a contract of marriage, which, because it may serve to exemplifie the manner of espousals in those elder times, and is a great illustration to a model

(*) Ms. in
Text. Rossens.

or constitution of that nature exhibited of late by Sir Hen. Spelman, Conell. Tom. 1. pag. 425. and Mr. Whilock, in his late Edition of the Saxon Laws, pag. 60. I shall tender it to common perusal, from that part of it left and laid up at Christchurch, transcribing it in the Appendix, Scriptur. 17. Before I proceed, having made mention of that constitution, touching the manner and rights of espousals, let me (so fairly occasioned, with excuse for the digression) help to rectifie the edition with some animadversions, which to me it seemeth much to want, in the Saxon especially. First then I conceive, the first word of the second chapter in the Saxon copy, *viz.* (þ) as belonging to the precedent chapter or article, ought to be taken thence, and placed as the very last word of that precedent article, and so we are to read it, *þa þan geseoð þa þa, .i.* according to the Latine copy, *& plegiens* (rather, *si plegians*) *hoc amici sui*. In the next, or second article, I conceive the two last words there, *þan ryððan*, belong to the next, the third article, which consequently is to begin there. As imperfect is that article in the end as in the beginning, wanting to perfect it, the whole first line of the next (the fourth) article, *viz.* *gif heolng ryððan he*, all which, I say, belong to the precedent article, the fourth being to begin at *gif hit ssa gesonryððan he*, which I conceive not well turned (as in the new Version there) by *si quidem evinias*, being rather, under favour, thus to be rendred: *si sic convenias*, and thus indeed runs the old version in the precedent page; and so (to passe by some intervening literal mistakes) is that in the close of the sixth article, *þa þan to ðam þorðe se ðe ða pettoer salsend ry*, by *satisfactionem-*
que

que accipiant de celebrandis nuptiis. The old version here is: *Et excipiat inde plegium qui jus habet in vadio.* I once pitched upon this version: *Satisfactionemque inde accipiant qui sponsalia ordinauerint,* i. e. *Paranympbi.* But leaving that, to return to our purpose. By what is premised, I conceive we have ground enough to conclude against what *Spot* singularly delivers touching the Conquerour and Kentish mens meeting, with the manner, product, and result of it, and consequently, what is built upon it, our counties retaining her *Gavelkynd*-customs and priviledges by means thereof.

But after this pulling down with one hand, to help build up another while with t'other, and not to leave the cause of our enjoyment of those Liberties (that especially of Partition, the more eminent property in *Gavelkynd*) thus uncertain, let us enquire into the carriage of affairs of this nature about the times of the Conquest, when they say we obtained to preserve and continue this (amongst the rest) by composition with the Conquerour, whilst the rest of the Kingdom was deprived of it. I say deprived, because as (p) *Privatio* *presupponit habitum*, so those who are of this opinion take it for granted, that before the Conquest, by virtue of a national custome first induced by the Saxons, and by them traduced from the Germans, intended by *Tacitus* in his *Heredes successoresque sui cuique liberi*, &c. and afterwards incorporated into our Laws by (q) King *Cannus*, inheritances descended and were partible after the nature and manner of our *Gavelkynd*, at this day. So of late (amongst others) Sir *Hen. Spelman*, in his Glossary, verb. *Gavelitum*; *Daniel* in his History, fol. 38. *Verstegan* in his Antiquities pag. 57.

(p) L. Decem in fi. de stipul. l. manumissionis, de iustia. & jur.

(q) LL. Canuti, par. 1. cap. 48, & 75.

Archbishop Parker in his *Antiquitates Britannica*, pag. 108. and Mr. Lambard, in his Glossary, verb. *Terra ex scripto*, though afterwards in his Perambulation, pag. 545. he is found to crosse himself herein, by saying that this custom was brought hither out of Normandy by Odo the Conquerours brother. Now 'tis true, and not to be denied, that by these Laws of *Canons* inheritances were partible; but how? It may be equally, (like our *Gavelkynd*) but it is not so expressed, nor do the words inforce it. It's ordered there indeed, that a partition of the estate be made, in the one, between or among the wife, children, and next of kin, by the Lord, in the other, by the heirs among themselves; in both, not *prope emne*, or *prope efen*, i. e. equally, but *prope pihite*; in the former more explicitly thus: *aleumbē hēp mēpē*, &c. i. e. (according to the old version in *Brampton*) *unicuique secundum modum qui ad eum pertinet*. Here is now no equal division spoken of, no equalling the younger with the elder brethren, or the like. But the estate is to be shifted *prope pihite*, i. e. *according to right*, justly, or if you will (after the old version of the latter Law in *Brampton*, being the same verbatim with that in Mr. Lambard (r) elsewhere) *recte*, every one to have his due, haply after a Geometrical, not Arithmetical proportion. Again, not by equal proportion, in point of goods at least, for each was to partake thereof, (as in the *Gavelkynd* partition (f) in Ireland, each one a part according to their quality, degree, or desert) *pro rata*, happily their *reasonable part*, whence indeed some do fetch and ground a writ we have among us, called *Rationabili parte honorum* (concerning which there is a question in our books, whether it lie

by

(r) Archæion,
fol. 136. a.

(f) Davies
Reports, Le
Irish custome
de Gavelkind,
fol. 49.

by the common Law, or by the custome onely of some

(1) Countries, and whose footsteps may be traced in venerable Bedes English Saxon Ecclesiastical History, lib. 5. cap. 13.) but of this matter more anon, at the

close or foot of this Proposition. Or again, the right, i. e. *juxta arbitrium boni viri*, as the Civilians in like case use to speak, or *pro arbitrio Domini*, as it is in the former of those Laws, be his right, i. e. *judicio suo*,

whose place, by provision of succeeding times, both here and in Scotland, was supplied by the (u) Ordinary, first joyntly with the deceaseds friends, afterwards without them and alone, as haply more to be

confided in, because by common intendment, as more knowing, so more careful to deal uprightly; though it be utterly unknown or uncertain when this trust began by written Law to be committed to the Ordinary; if I may guesse, about what time that provision was made for the like in (x) Normandy, whereof in *Matth. Paris*

History, anno 1190. pag. 161. edit. ult. Or else (to proceed) the right, according to right, i. e. Custome, or right, as it is ordered and directed or tempered by

the usages of several places, for (y) *Qualibet provincia abundat suo sensu*. Apposite and pertinent to this purpose is that observation of a late compendious (z) Historiian of our own, upon occasion of the Con-

fessours collection and complement of, as it were, a *Codex Legum*, (whither we may refer the original of *Magna Charta*) a Standard-law to be currant over all the Kingdome: Before these Collections (saith he) of the Confessours, there was no universal law of the Kingdome, but every several Province held their several Customes, all the Inhabitants from Humber to Scotland used the

(1) See *Comp. ult. Interp.* verb. *Rationabili parte bonorum*, & *Summarie of Testam.* par. 3. cap. 16, & 18.

(u) *Byrleton*, fol. 60 b. *Seld.* Tit. of Hon. cap. 5. sect. 21. p. 724 *Star.* *Will. Reg.* Scotor. 1. cap. 22, & 30.

(x) *Customar.* Normann. cap. 20, 21.

(y) 27. *Distinct.* *Ultimam.*

(z) *Daniel*, in *Will.* 1.

the Danique Law, Merchenland, the middle part of the Countrey, and the state of the West Saxons had their severall Constitutions, as being severall Dominions, and though for some few years there seemed to be a reduction of the Heptarchy into a Monarchy, yet held it not so long together (as we may see in the succession of a broken government) as to settle one form of order currant over all, but that every Province, according to their particular Founders, had their Customes apart, and held nothing in common, (besides Religion, and the Constitutions thereof) but with the universality of Meum & tuum, ordered according to the rights of Nations, and that Jus innatum, the common Law of all the world, which we see to be as universal as are the cohabitations and societies of men, and serves the turn to hold them together in all Countries, howsoever they may differ in their forms. So that though we shall admit these with the rest of *Cnutes* laws to be national, as by their Preface (that, I mean, of the second part, conteining his secular or politicke Constitutions) they are apparently no other, (*Dis is ðonne geƿolcscunðe geƿebner ðe ic wille mid minan wittan næbe. þ̅ man heald oðer eall Englaƿland :*) yet I take it these Laws (68. and 75.) conclude not for a national, general, or universal descent of Inheritances, by an equal or Arithmetical division amongst all the children or heirs, nor indeed for more than this, that a partition was to be made of the same, in point of proportion, more or lesse, according to what, *pro more patriæ vel loci*, and (in point of goods) *juxta arbitrium Domini*, was just and fit, there being no precedent general Law, or Canon here (now extant at least) to regulate, or give directions in case.

But

But if not nationally, (for, to give one instance in stead of many, *Thoroldus*, in a Charter of his to Croyland Abbey, recorded by (a) *Ingulphus*, makes mention of his Lord and kinsman, Earl *Algar*, the eldest son and heir of *Leofric*, Earl of Leiceſter, and his Countreſſe *Godiva*, *Thorold's* ſiſter, in the year 1051.) yet I am contented to admit and agree, that provincially, and particularly here in Kent, we had ſuch a Cuſtome both before and at the Conqueſt: neither am I againſt their opinion, who affirm the like courſe and cuſtome currant in thoſe times throughout the Kingdome, as not being deſirous to inſiſt much upon this example in *Thoroldus* charter, or any ſuch like, to the contrary, for the preſent, though I doubt whether it can concludently be argued from (the grounds and authorities they ſeem to go upon) thoſe Laws of *Cannus*. Nevertheſſe be it ſo: for though ſome will ſay, the Conquerour found it not here, but either by himſelf, or his brother *Odo*, brought it hither out of Normandy, and by the pattern and practice of his own Countrey planted it here, (how can this ſtand with *Spots* Story by the way ?) yet I am not of their mind. For had it been from thence tranſplanted hither, probably it would not have been confin'd to Kent, a corner onely of the Kingdome; but have ſpread it ſelf rather over the whole, by the Conquerours means, whoſe inclination and endeavours to propagate and implant here the Cuſtomes of his own Countrey, are too eminent and notorious to be doubted of. 'Tis nothing probable then, (what ſome have deemed) that we borrowed this cuſtom from Normandy, or that *Odo* was wrought upon by any pattern of that Countrey to ſet it up

M

amongſt

(a) Hiſt.
Croyl. fol.
519. a.

amongst us, but rather found it here at his coming. Supposing therefore such an universal custome here in England before and at the Conquest, it will concern us next to make enquiry, how it came to passe, that when all the Realme beside, hath in a manner discontinued it, Kent onely retains it, in that general manner at least, whereby in proesse of time it is become (as the Year-book quoted of (b) Mr. Lambard phraseth it) as it were a common Law there. The answer must be but conjectural, since Records herein fail us of all light, as well as Histories, all but Spots, who for the reasons pre-alleged shall be none of my Resolver. Will you have the common answer? Why then they say the Conquerour abrogated this custome in all parts of the Kingdome save onely in Kent, which obtained to continue it by composition with him when they met at Swanescumb. But having formerly said (I hope) enough in answer hereunto, I will seek further, and try if some other more probable cause may not be found for it.

The Conquerour then (I will suppose) consented to the continuance of this custome generally throughout the Kingdome, in all, I mean, but Knight-service land, the descent whereof to the eldest son alone, (partly for his own, and the Realms better (c) defence and strengthening, and partly for the upholding and maintenance of (d) gentile families) I suppose none doubts to be lesse ancient than the Conquest, for so much of it (at least) as is of ancient Tenure, (as Mr.

(a) Coke upon
Littleton, fol.
24. a.

(d) Hodie nobilitas subinde
allodiales facit
trapias divisioni
inter liberos

obnoxias, in feuda redigere solet; scilicet ut primogenito consulas, & potentia rerum in unum
glomeratis, sunt familiae splendor multitudine liberorum in posteritate non gravetur. Nic.
Burgund, de Consequed. Flandriae, Tract. 7. pum. 7.

Lambard desires to qualifie it :) Nay, and seems to give expresse allowance to it, without distinction of lands, by that 36th of those Laws in *Ingulphus* copy, which after the Conquest, he granted to the people of England, and were indeed (as the title of them intimates) the Laws of the Confessor, his predeceffour; or rather, say (e) some, of the Confessours predeceffour, *Cannus: Si quis intestatus obierit, liberi ejus hereditatem equaliter dividant.* So runs the Law according to (f) Mr. *Seldens* version from the original French or Norman. Some haply may take this as intended onely as a rule for goods, not for lands too. But to that it may be replied, that the word (*hereditatem*) there (if of that acception then, as since and at this day) will not admit of that construction; since, by the common opinion both of elder and more (g) modern Lawyers, nothing passeth with us here in England, *jure hereditario*, but onely Fee, and that Hereditaments are such things as do naturally, and of course descend to the heir, and neither to the Executour or Administratour, as chattels do, whence that of *Littleton*, Sect. 1. *Feodum idem est quod hereditas*, answering to that of (h) *Bracton*, long before him: *Feodum est id quod quis tenet ex quacunque causa sibi & heredibus suis.* See to this purpose *Glanvill*, lib. 13. cap. 27.

But here we meet with an objection. By this argument (will some say) you restrain and tie up the Constitution to lands onely, excluding goods, or chattels, as our Lawyers call them, from what ground, see in Sir *Hen. Spelmans* Glossary, verb. *Capitale*, to which add *Freherus* his Notes upon the Decalogue, published anno 1610. Precept the last. To construe it, (I

(e) *Camb. Prætan. Seld. Polyolb. and Spelm. Councils.*
(f) Notes on *Eadmer*, p. 184.

(g) *Cowell* Interpr. verb. *Heir*, and *Hereditament.*
As also *Instit. lib. 2. tit. 1. c. 166.*

(h) *Lib. 4. fol. 263. b.*

must confesse) or of either singly, or alone, were, in my judgement, too much to restrain and streighten it, and in effect to conclude it a lame and imperfect Constitution, ordering the intestate dead mans estate, and the disposal thereof, but to halves, as we say; wherefore I conceive, that to take the word (*Inheritance*) here to comprehend both, (as I suppose ~~the~~ doth in that 68. of *Canutus* Laws, whereto this here, if it were not taken thence, may seem to have some reference, is not more reasonable, than to understand it either of chattels, or lands singly, seems to me otherwise.

Why but then (say they) you admit of a power of devising Inheritance by will, and consequently make Fee and Free-hold deviseable, and that by Law, arguing from those words: *Siquis intestatus obierit*, &c. True; distinguishing times: for (I take it) nothing was more usual in those (*i*) times, (I mean before the Norman Conquest, and this, if you mark it, is originally a Law of the Confessours, or rather of *Canutus*, his predecessour) than to devise and give lands away by will, though therein they receded from (their first copy) the German custome, of *Nullum testamentum*; a provision afterwards received into the body of the Feudal Law, which thus hath it: (*k*) *Nulla ordinatione defuncti in feudo manente vel valente*. It was then, I say, a usual thing, with their Lord's consent at least, to dispose of their land by will, especially their *Boeland*, thence haply, amongst other titles given it (as being sometimes termed and turned (*l*) *Alodium*, otherwhile (*m*) *terra hereditaria*, often (*n*) *terra libera*) not seldom called (*o*) *terra testamentalis*, that is (as an old Leiger-book in Guildhall London expounds it) *terra*

Objection.

Solution.

(i) See Gesta
Guliel. Ducis,
8c. p. 200. b.

(k) Lib. Feu-
dor. 1. tit. 8.
parag. 1. & ibi
Hotomannus.

(l) Versio
Fragmenti
Saxon. in
Text. Roffens.

(m) LL. Alure-
di, cap. 47.
apud Jorna-
lens. LL. Ca-
nut. cap. 104.

ibid. LL. Edo.
in Lamb. fol.
136. a.

(n) LL. Eitel-
redi, cap. 2. in
Jornal.

(o) Judic. Ci-
vir. Lond. ibid.
cap. 1. LL.

Canuti, c. 32.
ibid. & Glos-
sar. ad calcem
LL. Hen. 1.

verbo Boeland.

quam homo potuit in lecto suo languens legare: with this limitation notwithstanding, that such *Boecland* were not by precaution in the original gift or grant, liable to that or the like restriction, in point of alienation, occurring in the 37th of King *Alfred's* laws, which nevertheless extended but to strangers, a man being there forbidden to alienate his land of that nature of his *merge boph*, i. e. *extra cognationem vel progeniem*, or, in the Civillaw phrase, *extra familiam*, from his own kindred or family, whence perchance it came afterwards to passe, that in such *terra gentilitia*, the heirs concurrence was required and used in the alienation. Instances of this kind (of disposing land by will, I mean) might be given in abundance, but a few may serve the turn. To passe over, as obvious, because publike, King *Alfred's* will, at the end of his acts and life by *Asserius*, though I might here perhaps not impertinently take up that of *Regis ad exemplum*, &c. to let that passe, I say, as also for the like reason, to omit *Byrhticks* will of Mephram in Kent, extant in the Perambulation, pag 492. whereunto (if need were) I could add many more examples, as well out of St. Albans private History, now of late made publike by my deceased friend Dr. *Watts*, as from the Records of the Church of Canterbury, whereof, besides the copies of some whole wills, I have by me several extra^{ts}: To let all these passe, I say, I shall onely instance in a will or two, one of a very eminent personage, an *Etheling*, (p) Prince *Ethelstan* byname, the son of King *Ethelred*, which I shall set before you in the Appendix, Scriptura 18, as Scriptura 22, the other; with some imperfections and misprisions here and there, I confesse,

(p) Of whom
see Speed, Hist.
in the life of
Ethelred the 3^d.
Monarch.

but through the Transcribers fault that entered them in the Leiger, and by reason of his ignorance (it should seem) of the Saxon tongue and character, which I dare not undertake to rectifie. Thus for practice. As for law: besides that power in all men in those times to devise land in general, by their wills, without any violence deduced and concluded from that 68 of *Canutus* laws, providing how a mans whole estate (the Lords Heriot onely excepted) shall be disposed of, in case he die intestate, we have a more expresse law for it afterwards, the 76th I mean, for such land at least as is there termed land *gepeped be reyne gepitnerre*, i. e. (as Mr. *Lambard* construes it) *terra omni lite soluta*, or (as it is turned in *Fornalensis*, and the 35th of the Confessours laws *de Heretochis* in Mr. *Lambard*, fol. 136.a.) *terra acquietata comitatus testimonio*. Let me illustrate it by a passage in a Charter (q) of King *Edmund* to *Aelfhere* his Thane in the year 941. of certain lands and possessions there called *Mulanton*, running thus: *Prout pater ipsius Aelfheri priorum temporibus nostrorum, sub contestamine totius popularis Senatus, sua pecunia, ab illo & ab alio, prout tunc temporis mos erat, adquisiuit*. In effect it was, as I conceive, if not the same with *Eccland*, (called *terrestamentalis*, not onely because deviseable, but also in regard of the publique testimony of the Shire, required and used in the passing of it otherwise than by will) such land (like that mentioned of Mr. *Selden*, Tit. of Hon. par. 2. cap. 5. pag. 631. and there said to be holden, *quiete & absque omni calumnia*; or like that passed or conveyed, as in Sir *Henry Spelmans* Councils, pag. 319. and 333.) as was unquestionably a mans own, as upon the purchase or grant

(q) In Armbr.
Ecclef. Cant.

grant of it confirmed and assured to him in the legal way of those times, such haply (like those of latter times passed by Fine) the conveyance whereof was recorded and inrolled, or entred in the Shire-book, in publike Shire-mote after proclamation there made, for any to come in that could lay challenge, or pretend right unto it; whence not improbably our manner of recording conveyances, sometimes (as in Canterbury) in the Hundred, sometime in the Burgemote, otherwhile in both, whereof I am not unfurnished of instances. Thus for that kind of land. Now for *Boceland*, and how the Law stood there: (r) Sir Henry Spelman, I confesse, is cleer of opinion against all power of alienation in the owner, and that of necessity it must be left to descend to the heir, and thence is called *terra hereditaria*, grounding upon that 37th of King Alureds laws, which he there recites. Under favour, that Law cleerly makes for the contrary, allowing unto the Possessour a power of alienation, saving where his hands are tied from it by an expresse provision and prohibition to the contrary, from those (the Ancestour, or who else) it came unto him from; a caution in my apprehension of the same nature with an exception, which (as (s) Civilians use to say) *firmas regulam in non exceptis*. And as for its name of *terra hereditaria*, and the argument upon it, it is easily answered, as thus: so called it was to distinguish it from *Foleland*, otherwise called *Gafolland*, wherein the Tenant being but as it were a Lessee, Usufructuary, or Fermour, and having no propriety, upon his death, or other expiration of his term it reverted to the Lord, and descended not upon the heir, as *Boceland* did, at least ought.

Vid. Braden, lib. 1. cap. 14. num. 12. fol. 38. a.

(r) Glossar. verbo Boceland.

(s) gl. Ex his in addit. in parag. item placet. Instir. de donatio. & parag. ut autem lex, in Auth. de non alien.

ought to do, being (because his own in propriety) hereditary, if not alienated by him in his life time, as it might be, in regard it was as well *terra libera*, as *hereditaria*, and so called, which *Folcland* never was, however Sir *Henry Spelman*, in a place (1) so assert, likening it to *Allodium*, which indeed was *liberum*, and consequently capable of alienation, either by gift or sale, to whomsoever the owner pleased; a property appropriate to *Bocland*, thence otherwise called, especially abroad, *Allodium*, whereof more hereafter. But further to clear the point of *Boclands* being alienable, and in the power of the owner to dispose of at pleasure, have here a pregnant passage for

(1) Glossar.
verb. *Folcland*,
& verb. *Allodium*.

(*) In Archiv.
Eccles. Cant.

our present purpose, borrowed from a Charter (*) of Archbishop *Wifred* (who died about the year 830.) of the gift of certain houses to his Successors in the See of Canterbury, thus speaking: *Gif ðonne hwele mon ðæt uops cƿæðe ðæt ne me ƿiæ min ƿiæ ðon aleƿeðƿan ðon oðrum hiȝum to bƿucenne ne minum æƿſeƿeap-ðum. ðonne ƿiæ he ðæt hit næf neƿne cƿiſteſ cƿiſcan land ne nengeſ monneȝ boclonð æƿ min. 7 ðonne ƿe monne ƿeond ðence 7 aȝmeate be oðeppa monna boclon-ðum ƿe in ƿƿiſſetolum ƿe butan. hwaðeȝ hio meȝen hioƿa aȝ in ƿellan oððe on hioƿa liſ ȝan ƿue hiin leoſ ƿiæ oððe ƿop huðu min ƿeȝle beon un ƿe . . . I ðenpe ðon oðrum monnum hioƿa.* That is, in our modern English: *If any*

(x) *Quere*:
for the writing
is not clear.

man shall say that this Mansion is not more in my power, or (the power of) my heirs to use, than of the rest of the Society, (or Covent) then let him know, that it never was Christ-church land, nor any mans Bocland before it was mine: and then let him further think and consider by other mens Bocland, as well in privileged places, as without, whether they may grant away their own (land,

OR

or possessions) or give it for (or, in) their lives times as pleaseth them, or wherefore mine should be of different kind to those of other men. Thus the Charter, as I understand it. Bealand then, I conceive, we may conclude alienable by the owner of it, both by act or grant in his life time, and at his death by will, in the times (I mean) before the Conquest. But afterwards that custome of devising it by will ceased, as did withall the descent of land generally, by equal division amongst all the sons. For, as the English Laws and Customes in general, from that time suffered a daily eclipse and declination by degrees, so this in particular (saying where they were more tenacious of it than elsewhere, and in such places, whereof (y) London seemeth to be one, as by special priviledge were suffered to keep it up) languished, and was at length supplanted by that other kind of descent, which now regularly takes place throughout the most part of the Kingdome. In somuch as where this partible descent cannot, to uphold it self, justly plead antiquity and ancient custome, it quite fails, and falls to the ground. And to this passe (I take it) was it come in *Glanvill* and *Bractons* dayes, who therefore harmoniously deliver this as a requisite and essential property in land of such descent, that it be not onely by nature partible (as it is by being Socage, if we may interpret *Bractons si hereditas partibilis sit*, by *Glanvills si fuerit Socagium*;) but withall, that by custome and of old it hath actually been parted. Now the Kentish men, it seems, the Commons there, I mean, like the Londoners, more careful in those dayes how to maintain their issue for the present, than their houses for the future, (a contrary respect to theirs

(y) See *Stowes Survey*, p. 535.

N

who

who have of late, by Act of Parliament, rid their lands of this Custome, as to that property of Partition) were more tenacious, tender and retentive of the present Custome, and more careful to continue it, than generally those of most other Shires were: not because (as some (z) give the reason) the younger be as good Gentlemen as the elder brethren, &c. (an argument proper perchance for the partible land in Wales) but because it was land, which by the nature of it, appertained not to the Gentry, but to the Yeomanry, whose name or house they cared not so much to uphold, by keeping the Inheritance to the elder brother. And thus at length, though 'tis like enough from small beginnings, (as many times great streams have but narrow fountains) it became so spread and diffused over all the County, that what was not Knight-service, but Socage-land, or of Socage Tenure, was in time (in Mr. Lambards phrase) apparrelled with the name, and (as may be added) qualified with the properties of *Gavelkynd*. And hence also it comes to passe, both that we very rarely, or never meet with any land there at this day, (other than Knight-service land) that is not of *Gavelkynd* nature, and of a partible descent, and that withall both our printed and manuscript Customals, whether general or particular, use never a word of Socage Tenure, but of *Gavelkynders*, Tenants in *Gavelkynd*, Tenements of *Gavelkynd*, and such like, as Mr. Lambard observeth, pag. 544. And notwithstanding the ancient printed Customal in *Tottell* claimeth freedom onely to the bodies of the *Gavelkynders*, which may be the truer reading, yet Mr. Lambards may, especially at this day, passe well enough, by whose copy it is

(z) Lamb.
Peramb. pag.
546. from *Lit-*
tleton.

is claimed as due to all the Kentish men in general, as, for the generality of the Commons, by common indentment, such at this day. But of these things hitherto. Yet ere I proceed to the next Proposition, let me discharge my self of a late promise for inquiry into the following Emergent :

Whether the Writ, De Rationabili parte bonorum, lie at the Common Law, or by Customs. See the Preface to the Reader.

THis Writ is grounded and dependeth on a tripartite division of a mans personal estate, whether dying testate or intestate, and leaving behind him wife and children; as in case he leave onely a wife, and no children, or children onely and no wife, upon a bipartite. In the former of which cases, one third part of the goods belongeth to the widow, another to the children, and the third (called the Deaths-part) to the use of the Defunct, to be disposed either by himself, as he shall see good by his will, or for him, if he die intestate, by the Ordinary *in pios usus*. In the latter case, one moyety falleth to the widow, or to the children, (as the case shall be) and the other to the use of the dead, as before. In both cases, to the children of the deceased, each of them a rateable part, provided that such child be not his fathers heir, or were not otherwise advanced by him in his life time, unlesse haply (for hereof there is some question) waving that his former portion, he shall choose rather (as in the case of lands) to take the benefit of this partition by the way of *Hotchpot*, which is all one with the Civilians *Hotchpot*. *Collatio bonorum*, or the Lombards *Missio in confusum*.

See Dr. Cowell, and Sir Henry Spelman, in *Hatchpo.*

Now that there was any certain, or definite part or portion of the deceaseds goods or estate, (whether real or personal) any *Quota pars*, or *Legitima*, as the Civilians term it, by any custome here nationally observed, due to the widow or children in the Saxon times, doth not (that I can find) appear by any Law or other monument of theirs now extant. The plainest and most visible footsteps of that tripartite division or partition by this Writ intended, appear in that remarkable place of venerable *Bedes Ecclesiastical History*, lib. 5. cap. 13. where we read of one, who, Testator-like, disposing of his substance or estate, *Omnes, quas possederat substantiam, in tres divisit portiones. Equibus unam conjugi, alteram filijs tradidit, tertiam sibi ipsi retentans, statim pauperibus distribuit.* The Saxon reading hath it more for our purpose thus: "Eall his ætho on ðreo to ðæfæ. ænne eal he his wife gealde. e oþerne his beapnum. Eone ðriððan ðe him gelamp. e he mæcpe ðeapnum gealde." Where mark, the third part is there said to belong to himself: "Eone ðriððan ðe him gelamp, &c." plainly insinuating that the other two as rightly appertained to his wife and children, each of them a third. But withall observe, that this is the act of an house-keeper in the Province or Region (as there called) of Northumberland: *Paterfamilias in regione Northanhymbrorum*, &c. so is he described; and such a testimony indeed it is as makes much (I confesse) for the antiquity of that Custome (of a tripartite division) yet surviving and currant in those Northern quarters of the Kingdome, but whether, in right construction, extensive any further, or concluding

"leave of hissum life gerite, &c. i. e. If any one depart this life intestate, &c. implying *liberam testandi facultatem*, a free liberty to dispose otherwise by will: as doth also that Law of his Successour, the (b) Confessor, ratified and re-inforced by his Successour, the Conquerour, providing that the children of persons intestate shall equally divide the heritage. In which respect, and because by taking no notice of the widow, (as neither doth that other Law of *Canutus*, par. 2. cap. 75.) it tacitely seemeth to exclude her, I know not well what (much pertinent to the point in hand) can be concluded from that Law. And as not from this, so neither, I conceive, from that Law of King *Hen. 1.* cap. 1. because it concerns and speaks onely of the Kings own Barons and Tenants: [*Si quis Baronum vel hominum meorum infirmabitur, sicut ipse dabit vel dare* (c) *disponet pecuniam suam ita datam esse concedo, quod si ipse praeventus vel armis vel infirmitate pecuniam non dederit nec dare disposuerit, uxor sua, siue liberi, aut parentes, aut legitimi homines ejus eam pro anima ejus dividant sicut eis melius visum fuerit*]. And is seemingly no national provision, no rule intended for the generality of the Subjects, the Communalty: or if it were, yet with such expresse full and free liberty (inconsistent with this Writ) given by it to the party to dispose of his estate by will at his pleasure, as tacitely was granted both by that fore-cited 68. Law of King *Canutus*, and that other of his Successour the Confessor, whereof also before. So that admitting, or supposing a will, the subsequent division or distribution (prescribed by that Law of *Hen. 1.*) took no place, as by consequence neither did that reasonable or rateable

part

(b) *Si quis intestatus obierit, liberi ejus hereditatem aequaliter dividant.* Vid. Cl. Seldeni Not. ad Eadmer. pag. 184. c. 36.

(c) *al. jufferit.*

part intended by this Writ. Passing therefore hence let us next (as next in order of time) consulte (that Oracle of the Law) Judge *Glanvill*, living and writing in *Hen. 2.* dayes. He indeed, lib. 7. cap. 5. is expresse for this kind of tripartite division: *Cum quis* (saith he) *in infirmitate positus testamentum facere voluerit, si debitis non sit involutus, tunc omnes res ejus mobiles in tres partes dividuntur equales. Quarum una debetur heredi, secunda uxori, tertia vero ipsi reservatur: de qua tertia liberam habet disponendi facultatem: verum si sine uxore decesserit, medietas ipsi reservatur.* And to the same purpose again, eod. lib. cap. 8. *Si post debitorum acquiescentiam aliquid residuum fuerit, tunc id quidem in tres partes dividetur modo predicto* (he refers to the forecited fifth chapter) *Et de tertia parte suum ut dictum est faciat testamentum.* To which kind of tripartite division, he plainly seemeth to refer, and have respect afterwards, lib. 12. cap. 20. where he layes it down in *terminis*, as a thing *recepti juris*, warranted by the Custome of the Realme, that is the Common Law, saying: *De catallis autem* (these are the words of the Writ) *qua fuerunt prefati R. precipia quod ea omnia simul & in pace esse facias, ita quod inde nil amoveatur nec ad divisam suam faciendam, nec ad aliam rem faciendam, donec debita sua ex integro (d) reddatur. Et de* (d) 1. reddan-
residuo post fiat rationabilis divisio secundum consuetudinem terra mea. Thus *Glanvill*, with whom unanimously concurr (e) *Bracton* and *Fleta*. Hence now (e) Vid. *Bract.*
 many learned men conclude this tripartite division, and & *Flet.* p. 125.
 the Writ waiting thereupon, to be rather by orat the
 Common Law, than (as is thought by others, and
 by learned men also) by Custome, and that hereof

Magna

Magna Charta, cap. 18. expressly taketh notice, in the *Sauio*, or Limitation at the end, thus Englished: *Saving to his wife and children their reasonable parts*. The Opponents, and such as take the contrary part, endeavour to elude this as a matter rather of Counsel than command. So (for example) Dr. *Cowell*, Instit. li. 2. tit. 13. parag. 2. followed by Sir *Edw. Coke*, in the second part of his *Institutes*, pag. 33. who to assert his opinion in the negative, (his denial of the widow and childrens right to a *Reasonable Part* by the Common Law) thus there adds: *The nature of a saving regularly is, to save a former right, and not to give, or create a new; and therefore, where such a Custome is, that the Wife and Children shall have the Writ*, De rationabili parte bonorum, *this Statute saveth it. And this Writ doth not lie without a particular Custome, for the Writ in the Register is grounded upon a Custome, which (as hath been said) is saved by this Act*. But where going on he further adds, that *Bracton* was of the same opinion, quoting for it, (as (f) *Swinbourne* before him) that place of *Bracton*, fol. 61.2. [*Neque uxorem, neque liberos amplius capere de bonis defuncti patris vel viri mobilibus, quam fueris eis specialiter relictum, nisi hoc sit de speciali gratia testatoris, utpote si bene meriti in ejus vita fuerint, &c.*] with submission, they are both of them mistaken: that which *Bracton* there delivers, being a plain exception, deviation and diversion from the general rule by him (as by *Fleta* after him, *totidem verbis*) just before laid down, and taking place onely in Cities, Burrows and the like, by particular custome of the place, as (amongst others, *ut quidam dicunt*, say they) in London, and that upon this double consideration, namely, first, the advance-

(f) Of Testaments, par. 3. parag. 16. fol. 113. b. and 133. a. where he is out in saying, that *Glanvill* took his ground from *Magna Charta*, which is impossible; *Glanvill* being dead long before: an error (it seems) occasioned by that marginal quotation, not *Glanvill's* own, but his that set him forth, or some others.

advancement of trading and traffique (the life of all Common-wealths, especially of Ilands) which would be much encouraged by this liberry I left to the Merchant or Trades-man, to dispose of his labours and gettings, where and how he saw best; and secondly, the countenance of vertue, and discountenance of (her opposite) vice, when by a necessity laid upon the wife and children, to comply with the husband and father in such wayes, both of thrift and duty, as might win and wear his love, and consequently, make him willing to requite their merit, the vertuous should be rewarded, the vicious discarded: *Vix enim* (say they, *Bracton* and *Fleta* both) *inveniretur aliquis civis, qui in vita magnum questum faceret, si in morte sua cogere-tur invitus bona sua relinquere pueris indoctis, & luxuri-osis, & uxoribus malè meritis: & ideo necessarium est valde, quod illis in hac parte libera facultas tribuatur. Per hoc enim tollet maleficium, animabit ad virtutem, & tam uxoribus quam liberis bene faciendi dabit occasionem, quod quidem non fieret, si se scirent indubitanter certam partem obtinere etiam sine testatoris voluntate.* And this (I take it) is the thing (the good of the Common-wealth, by the maintenance of traffique, much encouraged by the liberty of a free Devise) by *Glanvill*, though somewhat darkly, pointed at, lib. 11. cap. 11. where (acquainting us, that an Assise of Mortdancester lies not for houses or tenements, [which are wont to passe *inter catalla* in Burrows, as *Bracton* and *Fleta* in-form us] because of a greater commodity redounding to the Kingdome by another kind of Assise, an establi-shed course I suppose he means, warranting the liberty of a free Devise of such things, *sanguam catalla*) he

O

saith :

saith: *Item ratiōe Burgagii cessare solen a fissa per aliam a fissa ex causa majoris utilitatis in regno constitutam.* But notwithstanding it were thus in London in those times, (when *Bracton* and *Fleta* wrote) yet afterwards it seems that custome (of a free and arbitrary Devise) ceased, and (haply upon those counter-grounds, or contrary considerations, brought and laid down against it by the same *Swinburne*, fol. 113. a.) gave place to this kind of tripartite division: witnesse (besides *Mr. Lambard*, *Perambul.* pag. 361.) what in a book lately published, intituled the *City-law*, and said to be translated from an ancient French Manuscript, pag. 7. is delivered in these words: *And it is to be understood, that when a Citizen of the same City (London) hath a wife and children, and dies; all the goods and chattels of the said party deceased, after his debts be paid, shall be divided into three parts; whereof one shall remain to the dead, and shall be distributed for his souls benefit; and the other part shall be to his wife, and the third part to his children, to be equally shared between them; notwithstanding any will made to the contrary, &c.* But (to proceed) although *Glanvill*, *Bracton*, and *Fleta*, one and all, seem to conclude for this rule or order of Partition, to obtain and take place by the Common Law; yet, as this course did not long survive them, but, except where particular Custome (such as that whereon the Writs in the Register are grounded) kept it up, at length grew into dis-use, in the case both of testate and intestate persons. (witnesse on the one hand, the liberty time out of mind generally used at pleasure to dispose of personal estate made by will; and on the other, the Ordinaries well-known power of distribution of Intestates

states goods, which is not without warrant from that
 clause at the end of *Magna Charta's* 18th chap. whereof
 in *Matthew Paris*, and (g) elsewhere:) so with all these (g) *Et si qui*
 passages in *Glanvill*, *Bracton* and *Fleta*, are so inconsi- *liber homo in-*
 stent with what, in the case of testate persons, them- *restatus des-*
 selves with almost the same breath, deliver, that I *ferit, per manus*
 know not how possibly to reconcile them. Whereof *parentum pro-*
 the former thus: *Potest enim quislibet homo liber mayo-*
ribus debitis non involutus, de rebus suis in infirmitate
sua rationabilem divisionem facere sub hac forma secundum
cujusdam patrie consuetudinem, quod Dominum suum pri-
mo de meliore & principaliore re quam habet recognoscat,
deinde Ecclesiam, postea vero alias personas pro voluntate
sua. Quicquid autem diversarum patriarum consuetudi-
nes super hoc teneant, secundum jura regni non tenetur
quis in testamento suo alicui persona precipue nisi pro vo-
luntate sua aliquid relinquere, libera enim dicitur esse cu-
juscunque ultima voluntas, secundum has leges sicut &
secundum alias leges. The other two, to one effect thus:
Cuiuslibet autem sit licitum facere testamentum de rebus suis
mobilibus & se movensibus, & quatenus supersueris de-
ducto are alieno, scilicet debitis aliorum, &c. Thus, in
 mine opinion, do the same men more than seem to
 fight with, and contradict themselves, and how to set
 them agreed is past my skill. But indeed *vix tanti est*,
 'tis not much material, since if we shall admit (what
 some eagerly contend for) this rule and order of parti-
 tion to have sometime been by Law current through-
 out the Realme, yet by general disusage and disconti-
 nuance, it is now, and that not lately, antiquated and
 vanished out of ure, both in this (of Kent) and other
 Counties, surviving onely (for ought I hear) in the
 Province

Province of York, and some few Cities, and that it should ever be revived, at least in the case of testate persons, until first some way may, if possibly, be found, how to dissolve this knot, and remove this rub of flat repugnancie and disagreement of those ancient Authors (the vouched Patrons for it) with themselves in the point. I for my part, having better judgement, see but little reason, and further than thus dare not in a case so controverted and canvased by learned and judicious Lawyers, interpose any judgement of my own.

PROPOSITION IV.

Whether Gavelkynd be a Tenure or a Custom.

IT will not be amisse (I hope) to usher in the answer to this *Quere*, with some digression concerning Tenures. Facing then about, and looking back upon the times before the Conquest, inquire we out the Tenures (if I may so call them) then in use, and what other succeeded in their places afterwards at and since the Conquest. Here I expect it should be granted (for 'tis avouched I am sure by several *(h)* men of credit) that before the Conquest we were not in this Kingdome acquainted with what since and to this day we call *Fenda*, Forainers *Fenda*, i. e. *Fiefs*, or *Fees*, either in that general sence I mean wherein they are discoursed of and handled abroad in the Book thence intituled *De Fendis*, at home in that called

(b) See Mr. Seldens *Tides*, 2. Edit. pag. 228. 273. 301. Illustrat. upon Polyolb. p. 103 Sir Hen. Spelman's *Glossary*, verb. *Fundum*.

called *Littletons Tenures*, or in that particularly understood of us, when we treat or speak of Knights-Fee, which could not then be known here, when Knights themselves were not in being, as (saith a Record in the Cathedral of Canterbury, whereof more (i) anon) they were not till the Conquerours time Or if in effect they were known to us, yet in terms certainly they were not: for the name of Fee, or *Feudum*, in this sence is no where to be found in any our Records or Monuments of those dayes now extant, and of credit, If my self and others have not been more unhappy to misse it, than indiligent to seek it. 'Tis true, it occurs in the fifth and sixth of the Laws ascribed to the Confessor, set forth by Mr. *Lambard*, in the *Varia lectio* there in the margent; but besides that the Text in each place reads it *Fundo*, those Laws, I take it, for the most part, especially as to their phrase, carry not that antiquity; but, like those of like kind in Scotland; ascribed to King *Malcolm* the (k) second, and King *Alfreds* will at the end of the Story of his life penned by *Asserius*, where the word several times occurs, savour of a later dresse. The like no doubt may as truly be said of that, *Qui in feodo suo*, in the old Latine Version of King *Edgars* Laws, following those in the original Saxon set forth in the late Edition of the Councils by Sir *Henry Spelman*, pag. 446. And may we not upon this (amongst other grounds) question those Charters in (l) *Ingulphus*, thus far, I mean, as to doubt, whether many, if not the most of them, speak not another than that tongue in which they were originally penned, as being by the Authour, (though English born, yet afterward Normaniz'd, by conversing there some

(i) And in the Appendix, Scriptura 21.

(k) Vid. Spelm. Glossar. verb. Feudum, pag. 258. col. 2. & verb. Baro, pag. 81. col. 1.

(l) Histor. Croyland.

time, as a Retainer and Secretary to Duke William, afterward Conquerour, and King of England) whose Story is penned in Latine, the better to suit with it, taught to speak the Latine of his time, and late Masters native Countrey: upon this ground, I say, that amongst many other phrases scattered here and there, not in use with the Saxons, nor ever heard of here in England till about Ingulphus own time, (such as *Aueria*, *Ballivus*, *Bedellus*, *Communa pastura*, *Fusticiarius*, *Forisfactura*, *Tenura*, *Weif*, *Stray*, with many more such like, which I forbear to name in this place) occurs *Feodum*. For example, in the Charter of *Wulf*, the Mercian King, dated anno 833. we have it thus: *& xl. acras de eodem feodo in campo de Deping*. The like in a Charter of *Bertulph*, another Mercian King also, dated anno 860. and in some other of later date from succeeding Kings, we have ----- *de eodem feodum de Gernthorpe*, and the like: whereas it may very justly be doubted, whether either the Laws, Stories, or other, either written or printed monuments of credit of any Nation or Countrey, can shew the word (*Feodum*, or *Feudum*) in use amongst them (but in stead thereof *Beneficium*, *Feodum's* elder brother, or the like) until about that age, until (I mean) after the beginning of the tenth Century from our Saviours incarnation. And hence give me leave, with *Buchelinus*, in his Illustrations upon *Heda's* History of the Bishops of (m) *Utrecht*, to suspect that list or memorial, (n) *De vastis frue fide additis Ecclesia & Episcopo Traiectensi*, (as there it stands intituled) of *Heda* ascribed to *Adelboldus* the 19th Bishop of that See, who after he had late 18 years, died in the year 1028. as indeed a piece unadvisedly

(m) Pag. 116.

(n) Pag. 111.

sedly referred to that time and place, and in all probability belonging to some Successeur of his. But be that as it will, I see nothing however that may render us unsatisfied of the truth of their assertion, who say that the Conquerour brought, or introduced first into this Kingdome *Feudum*, *Feodum*, or (as in English) *Fee*, taken as it signifies Feudal services, especially military, (*pradium militare*) the sence in which, as it regularly occurs in the (o) Feudal books abroad, so constantly in Domesday-book here at home, for distinguishing the land from other there said to be holden *per gabium*, *ad firmam*, in *Alodio*, and other like Tenures there occurring: the Introducer borrowing (saith one (p) of my Authours) the term, (he might have added the Customes) from his own native country, Normandy, which he concludes from a passage of himself there quoted out of Domesday-book, thus speaking: ----- *In eodem feudo de W. Comite Radulfo de Limes' 50. carucis. terra sicut fit in Normannia*: thus subjoyning: *Feudum & Normanniam jungit, ac si rei nova notitia à Normannia disquirenda esset*. But with submission to better judgements, I question whether those words: *sicut fit in Normannia*, may not relate to

(o) *Hotam. de Feud. lib. 2. pag. 309. pag. ult. tit. 51.*

(p) *Spelman, ubi supra.*

(q) *Annuent. Rege, omnes Carrucatas, quas Angli Hidar vocant, funiculo mensurant. Order. Vital. Hid. Eccles. ad ann. 1089.*

(r) *Batons Elements, tract. 2. p. 30.*

tion,

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Sec. 3. p. 16.

tion, whatsoever the (*f*) *Mitroir* (a book whose antiquity is too much cried up of some) hath to the contrary, as if *interimus* known here in England in King *Alfreds* dayes, by whom (as the Authour there pretends) it was ordained that Knights Fee should descend and fall to the eldest, and Socage among all the sons; whereas in very deed we knew neither one nor other in those dayes, they with the rest since and at this day called *Fee-simple*, *Fee-tail*, *Fee-ferme*, *Frank-fee*, as also *Grand* and *Petite Serjeanty*, *Escuage*, *Burgage*, *Villanage*, and the rest, in the book of Tenures and elsewhere obvious, being all of the Norman plantation, and we by them, at least since their Conquest of us, brought acquainted with them, not knowing what Fee (in that notion) meant before, nor being to this day agreed among our selves, as neither are the Feudists and other writers on that argument in other parts, upon the etymologie and derivation, either of that or the word whereunto it is opposed, *Allodium*; wherein indeed Authours of several sorts, Lawyers I mean, Etymologists and Antiquaries so much differ and disagree, as that the further we wade in the research of their opinions in that kind, the more uncertain still we come off, and the further we are from (the end of our inquiry) satisfaction. However, I will on this occasion adventure to offer my sence, which, if well considered, may perhaps help to end the difference.

Fendum derived.

Not to repeat that variety of other mens opinions in the point, of which some, and those the most, and with most general applause and acceptation, fetch the former (*Fendum*) from *Fides*; others from *Fida*, or *Fida* (*bellum*) a third from *Fidm* a fourth from the German

German *Fuoden*, quasi a *fungendo*, i. *pascendo*, or (as
(1) *Gryphlander* hath it) from the Saxon *Foden*, i. e. *nut- (1) De Weich-*
rire: to let these derivations all passe without any *bild. Saxen.*
further repetition, as obvious enough in the writings *cap. 49. num. 8.*
of the Feudists and elsewhere, especially (with some
additions of his own) in *Martinius Lexicon Philolo-*
gicum: as likewise not to repeat the like variety a-
mongst them, (as obvious as the other) concerning the
latter, (*Allodium*) which some will have to be a deri- and *Allodium.*
vative from *al*, the privative particle, and *Laudium*, or
Laudatio, as a possession acknowledging no Authour,
no Lord of the Soil, but God alone; others from that
privative particle, and *Lodes*, quasi *sine Lode*, that is,
sine vassallo, as a mad man is called *amens*, to say, *sine*
mente, as whose possessour is no Vassal, whilst a third
sort fetch it from *Alfeud*, as we should say, possessions
common (i. e. such as may freely be given or sold) to
all or any of the people, the many: like in this (say
some) to what of old we here in England called *Folc-*
land, by which (but how properly, since *Folc* is
parallel'd with what sithence we call (u) *Copy-hold*, (u) *Cornells*
may well be doubted) they are found to illustrate it, Interpreter, &
contrary to a fourth derivation of others, who hold it *weH, Symbo-*
inseparable from the family, and thence of the Ger- *l g p. 1. 1.*
mans called *Ein Anlod*. A fifth sort there is, that draw *1 b. 1. sc. 603.*
it from the foresaid privative particle *al*, and *Lod* (in
French *Leud*) a Vassal, as it were, without vassallage, or
without burthen, which we English men (saith my Au-
thour rightly) at this day call *Lode*: not further, I say,
to trouble the Reader with either any longer repetition
of these and the like (for there are some other) various
opinions of this kind, or any Catalogue of the several
P Anthours

Authors of them, I will, as I promised, offer my conjecture at each words etymologie, with submission of it to better judgements.

In short then I say, that each of the two words in its original, which is German, is a compound consisting of two syllables, of which two, the latter (to begin with that) I conceive to be the same in both, and is no other than what is borrowed towards the composition of many several words of the same original, used and continued both in those, especially the Teutonic parts, and also here in this Island, from the time of the Saxons settling here, down unto this day, though with some little variation of the Dialect, occasioned by tract of time bringing its corruptions, and the intermixture of other languages: and that is with us *hade*, *head*, *hode*, with the Tentonics *hryd*, and *heit*, sometime *has*, betokening in each place (as *dome*, and *ship*, anciently written *seip*, in the terminations of many of our words:) a quality, kind, condition, state, sort, nature, property, and the like. Hence the military, masculine, feminine, childish, paternal, maternal, fraternal, sisterly, desolate, presbyterial, neighbourly, quality, nature, kind, condition, &c. of a Knight, a Man, a Woman, a Child, a Father, a Mother, a Brother, a Sister, a Widow, a Priest, a Neighbour, &c. is termed *Knight-hode*, *Man-hode*, *Woman-hode*, *Child-hode*, *Father-hode*, *Mother-hode*, *Brother-hode*, *Sister-hode*, *Widow-hode*, *Priest-hode*, *Neighbour-hode*, &c. The quality, nature, existence, of the Deity is stiled *God-head* with us, wth our Ancestours, the English Saxons (who wrote and had that *hade*, which we since write and have *hode* and *head*) *God-hode*. *Head* in *Windenhead* owes it self to the same original, denoting

ting out the virgin-condition, or maiden-quality of the party. *Heed* in Livelyhood is also sprung from the same root, whereby a mans state of subsistence is signified: and the like may be said of *hood*, in Falshood, Likelyhood, and a many words more of like termination, as expressing and setting forth in the one, the false, in the other, the probable, likely, condition of the thing predicated. This may also help us in the etymologie of what we use to call *Fent*, or *Deadly feud*, *Feud* (in our Ancestours, the Saxons *Fahð*, the Germans *Fhede*, *Fetde*, and *Faide*, which in truth is but a compound of their *Fah*, i. e. *Hofstau*, *Inimicus*, as we say at this day a *Foe*, and *hede*, *hade*, *bead*, *heys*, &c. i. *conditio*, *status*, *qualitas*, &c. together importing the condition of enmity in the person who bears it. I could here enlarge with instances of very many Teutonic words thus terminating, I mean, in their Dialect with *beyd*, *beit*, and the like, and by such their terminations predicating, as is said before, a quality, condition, &c. such as *Allenbeyd*, *Fethbeyd*, *Fjrnigbeyd*, *Hebbelickbeyd*, *Heyligbeyd*, *Maaghdelickbeyd*, and numbers more obvious in every page of *Kilianus Dictionarium Teutonico-Latinum*, and elsewhere; but I fear to be tedious.

Seeing now what the latter syllable in *Fendum* and *Allodium*, in their several originals, signifieth; and having taken the words thus asunder, let us next consider of the other part of the composition, their former syllables, which in *Fendum* (the former) is *Fah*, *Fee*, or *Fesh*, signifying as (x) *Focantia* in the general, so more peculiarly a *Salary*, *Stipend*, *Wages*, intended of use when we say: *Officers live by their Fees*, whilst in the other, *Allodium*, the former syllable rightly writ-

Feud (in
Deadly *Feud*)
derived.

(x) Saxon
Gospe's, Matt.
25. 18, 19 also
chap. 24. 12, 13.
& *Verfegaz*,
pag. 218.

ten, is *All*, *Al*, or (as with the Saxons) *éal*. Put we now the syllables together again, and then the former will come forth *Fro-hode*, *Fch-hode*, or the like; the latter, *All-hode*, and that most appositely, if applied to the Feudists *Feudum* and *Allodium*, considered in their originations and primitive acceptions. The former of which when first (7) instituted, was but personal, nor, as afterward, perpetual, patrimonial, hereditary, or holden (in *Glanvill* and *Bractons* phrase) *ad remanentiam*, but as a Clergy-man holds his Benefice, (hence in some ancient (x) Charteis called *Feodum*), onely for life; the Tenant being but a meer Stipendiary, a Termier, at best but a Freeholder for life, *Usufructuarius*, and indeed some were not so much, but held only (as our learned (a) Glossarist hath it) *ad voluntatem Domini*, as (b) others, *precarii*, not unlike our Tenants at will since and at this day: the land was onely lent, as the German term for it (c) (*Lehen*) seems to intimate. In proceſſe of time, degenerating and receding from their first institution, they became perpetual and hereditary, yet holden, as formerly, with a condition of service on the Tenants part, and *stipendii loco & nomine* on the Lords; by way (as it were) of Salary, Pension, or Stipend from the Lord, to gratifie and recompence his man withall for such his service, to which he was obliged under peril of forfeiture by the withdrawing thereof. I dare not add in consideration of Fealty or Homages, (in those times) since, though that acknowledgement in the Feudal Law, of some Fee tenable without an oath of (d) Fealty be indeed justly taxed for a paradox of such who will have Fee to come of *Fides*, (whence haply our legal maxime, that all Tenures

(7) Vide tit.
Feud. l. 1. c. 1.
De his qui
feudum dare
possunt & *Spelm.*
Gloss. verb.

Polonia, p. 253.
Cowell's Inter-
preter, verb. *Fee*.

(x) Biblioth.
Cluniae, pag.
3390. & *Cu-*
jer. de Feud.
lib. 3. tit. 1.

(a) Verb. *Fe-*
lonia.

(b) *Vulsius*
de Feud. lib. 1.
cap. 1. num. 14.

(c) *Kilian*.
Diction. v. b.
Leen, & Dr.
Zouch, De-
script. jur.
temporalis,
sec. 7.

(d) Vid. *Horo-*
man, de Feud.
lib. 2. tit. 3.
parag. 4.

nures regularly are liable to Fealty:) yet might Fee, by this derivation of it, stand with Fealty, and the Tenants of it be called (e) *Fideles feudales* without a solecisme; a good argument for the derivation of it thus, rather than from *Fides*, as of more scope, and more consistent with Fee of all sorts than that other derivation doth allow. Fees, I say, were holden but in service, *nomine quasi alieno*, the *Dominium*, that at least of Lawyers called *directum*, (though the *mile* were transferred on the Tenant:) the propriety, I mean, remaining and abiding still in the Lord, together with a power of restraining his Tenant from alienation, and consequently such land was but partially, conditionally, not totally and absolutely, granted our. Contrariwise, that which was termed, in opposition to it, *Allodium*, as it was hereditary, perpetual, and patrimonial, so was it sans all condition, free, and in the power of the possessor to dispose of it *ad libitum*, how he pleased, either by gift or sale, without asking any man leave: and as it was hereditary, perpetual, patrimonial, and free land, so was it withall possessed totally and wholly, not as our land generally in this Kingdome in Subjects hands at this day said to be holden in *Dominico suo ut de feodo*, as our Lawyers phrase it, but rather in *Dominico suo ut de jure*, (the owner having *Dominium* both *directum* and *mile*;) or in the Feudists phrase, and after their unanimous, harmonious definition of it, *plenus jure*, *integre*, *ex toto*; or *ex folido*, as (f) Malmesbury hath that which (g) Eadmerus expresseth by *in Allodium*, quit of all services, like Frankalmoine, whereunto Mr. Selden there in that respect resembles it. I may call it *absolutely*, *immediately*, or (if

(e) Vi. Spelm.
Glossar. verb.
Fideles.

(f) De Gest.
Pontif. lib. 1.
(g) Hist. No.
vor. l. 1. p. 12.
Vil. Dr. Zouch.
Descript. jur.
temporal.
sect. 5.

(h) Spelm.
Glossar. verb.
Allodium.

(i) As in *Hu-*
dis Metropol.
Salisburg. Bi-
bliothec. Clu-
niac. & Pre-
monstrat. Hist.
Ultrasect. &
Mirai Cod.
Donatio, &c.

you will) independently, without acknowledgement of any superiour Lord, nor unlike the Prince of Haynault, holding onely (saith my (h) Authour) *de Deo & Sole*, or, as other absolute Princes, *Gratia Dei*, in a word, in totality: whence the terms of *pradia immunita*, *terra propria*, *fundus proprii juris*, *patrimonium*, in (i) Charters and elsewhere given to such possessions. Probably, land of this nature was the same with our *Boctland*, which I sometime find in the Latine rendring of some Saxon pieces turned by it: (hence a hint to judge of the one by the other:) for what in the 11th Chapter of the first part of King *Cnut's* Laws is read *Boctland*: *Lut hpa þonne þegen ry. þe on his boctlande cýpicean hæbbe*, &c. and in the old Latine version of it in the Kings Ms. and *Jornalensis*, is turned *hereditas*: *Si quis Tainw in hereditate sua terram* (it should be *Ecclesiam*) *habeat*, &c. in another like old version in the book of Rochester called *Textus Roffensis*, is rendred *Allodium*: *Si liberalis homo quem Angli Thegen vocant, habet in Alodio suo Ecclesiam*, &c. By *Allodium* also is turned in the same Record (*Textus Roffensis*) what occurs in the Saxon fragment exhibited by Mr. *Lambard*, *Perambulat*. in *Mopham*, pag. 500. under the term of *Agener land*: *Et si villanus ita crevisset sua probitate, quod pleniter haberet quicunque bidat de suo proprio Alodio*, &c. *Allodium*, it seems thence, being properly such land as is fully a mans own. Shortly then, *Pendum*, *Fee*, or land holden in *Fee*, is no more (considered in its first and primary acceptation, to which they must have regard that will hope to judge aright of the ground for the first imposition of the name:) than what was holden in *Fee-bode*, by contraction *Pend*, or *Feod*, i. e. in a stipendiary,

stipendiary, conditional, mercenary, mediate way and natures, and with the acknowledgement of a superiour Lord, and a condition of returning him some service for it, upon the withdrawing whereof the land was reversible unto the Lord: in which respect, as the grant thereof is improperly called a Donation, being but (h) *Feodalis dimissio*, i. e. a Demise in Fee, so the Deed or Conveyance by which it was demised, is as improperly termed a Charter of Donation, being no more than a Charter or Deed of Feoffment. Such, I say, is *Feudum*. *Allodium* is contrarywise what is holden in *All-hode*, in totality, in a totall, full, absolute, immediate manner and condition, without acknowledgement of any superiour Lord, and free from any tie or compact for the returning any service at all for it unto any. Thus far (and I hope not too far, nor impertinently) for clearing the etymon of *Feudum* and *Allodium*, as the argument, so the torture of many learned pens, amongst whose derivations of one and t'other, I humbly crave this of mine (such as it is) may be admitted for future Indagatours, and all others of unforestalled judgments freely to consider of.

And now to spin on our former thred, and to reassume our argument of the Introduction of our Fees or Tenures by the Conquerour, w^{ch} that etymon coming in the way caused me a while to set aside: I here profess to concur with them, who upon the question put, resolve it in the affirmative, whereof our learned (i) Glossarist, for one, thus: *Feodorum servitutes in Britanniam nostram primu invexit Gulielmus senior, Conqueror noster*, &c. and a little after: *Princeps vero reservavit omnia feodorum gravamina Saxonum*

(h) VII. Flac,
lib. 3. cap. 2.
parag. 4.

(i) Verbo
Feudum.

non ne auditis quidem: no other Tenures, or, in the Scottish expression, *Haldings of land*, being formerly here in use but these two, *Boecland*, and *Folcland*; The (m) *Lambard*, one (saith my (m) Authour) a possession by writings, the in verb. expli- other without. That by writing (so he adds) was a est. verb. Tota freehold, and by charter; hereditary, with all immuni- ex scripto. ties, and for the free and nobler sort. That without writing was to hold at the will of the Lord, bound to rents and services, and was for the rurall people. It may be added, that the former took name from the lands *booking*, or *entring* (with the limits of it) in a *Codicil*, (as then called) a little book, or (as we since call it) a *Charter*, which if the land were given to a *Lay-man*, was in way of *Seizin* delivered to the party that was to have the land, (hence haply that ceremony we retain of delivering a *Conveyance* as the parties *Act* and *Deed*) or, (if to a *Monastery*) laid and left most commonly upon the *Altar*: *Ego autem licentiâ & consensu illius, testimonioque Episcoporum & Optimatum suorum, omnes terras meas, & libros terrarum propria manu mea posui super altare Christi in Dorobernia, &c.* as it is in the close of a (n) *Memorial* of the gift of *Monkton* and other manours to the Church of *Canterbury*, in the year 961, by Queen *Edive*, or *Edith*, whose picture, in thankful remembrance, was until of late reserved in that Churches Treasury. Hence was such a *Charter* vulgarly known in those times by the name of (o) a *Landbot*, in the Latine of the times *Telligraphum*, sometime *Codicillus*, and the like. Observe yet further, *terram hereditario jure conscribere, & liberam proclamare*, (the Latine phrase for creating *Boecland*) was a prerogative royal, or a *Royalty*, and out of the power of any Subject,

(m) In *Aymar.*
ejusd. ecclesie.

(o) See *Scriptur.* 30. in the
Appendix, &
Spelm. Glossary.

Subject, whence that passage often occurring in Subjects grants of lands in perpetuity to the Forenamed Cathedral, and other places, *viz.* and such a one King, his beoked once *viz.* i. e. *haredinaria jure concessit*, as also that: *liberum omnia proclamavit*, and such like: King *Esbelreds* privilege (as called) confirming to that Cathedral (amongst other things) their whole possessions, is hence by (p) one of the Subscribers called, *evminger bocunge*. But notwithstanding this Enfranchisement, the land was very seldom alienated by the possessor in Frankish times, without (what the Law of (q) Normaine afterward required) a concurrent, or at least a subsequent confirmation from the King, whereof examples are obvious in the List of that Churches lands and benefactors, published in the Antiquities of Canterbury, pag. 210. as also of the concurrence of the Magnates, or Nobles, in such *Boctand* grants, principally in that of Mallings. You shall have the very words, because remarkable: *Anno Domini DCCCxxviij. Egbertus & Athelwulfus Rex filius ejus dederunt Ecclesie Christi in Dorobernia Mallings in Subsexan, quod viz. manerium prius eadem Ecclesie dedit Baldredus Rex. sed quia (mark this) non fuit de consensu magnatum regni, donum id non potuit valere. Erden, &c.* *Boctand* thus flowing originally from the Crown, upon all forfeitures, and particularly that of the estate of the possessor, for deserting the wars, as if there were no mean between the King and him, the King alone was to take the (r) forfeit. But of *Boctand* more anon.

Some other kinds of land (I suppose) there were in those dayes, but all (I take it) reducible to the precedent

also, that is, granted out in service by the Lord to his
 Tenants, to be holden of himself, and to be paid pa-
 rolles as with *Essex* and *Newland*, (as with *Pen-*
land, being of the same nature: like the Frenchmans
Fief servans, i. *terra servans*, in respect whereof the
 Tenants were bound to be Retainers, Attendants and
 Followers to their Lords, Suitors to their Courts, and
 were thence called (in the terms of *Hen. 1. Laws*, taken
 up afterwards of (c) *Bracton*) *Folgar*, concerning () *LL. Hen. 1.*
 which see further in *Sir Hen. Spelman's Glossary*, verb. *cap. 8. Bracton*,
Folgar & *Folgar*, is also in the *Laws of King* 1b. 3. tra. 2.
Kute, par. 2. cap. 19. *cap. 10.*

Besides these sorts of land, after ages (since the
 Conquest) produced many other, such as, *Work-land*,
Cor-land, *Aver-land*, *Draf-land*, *Swilling-land*, *Mot-*
land, *Der-land*, *Swish-land*, *Ware-land*, *Terra Gosfama*,
For-land, *Bord-land*, and such like. Of each of which
 (for some satisfaction to the inquisitive) in a word
 or two,

The first (*Work-land*) is land of a servile nature and
 condition, *terra servilis*, as I find it called, as also (what
 indeed the word *loundesh*) *terra operaria*, because hap-
 ly at the creation of the manor, and distribution of it
 into parcels, charged with servile works, such as plow-
 ing and harrowing the Lords arable ground, mowing,
 rasing and carrying in his hay, sowing, weeding, reap-
 ing, and innirg his corn, making and mending his fen-
 ces, thateth his barns, and such like: charged (I say)
 with servile works, and not with Cens or Rent, or if
 also with rent, yet of the twain more especially with
 works, and therefore contradistinct, and oppositeto
Gaveland, which was land liable to Cens or Rent, or

Work-land.

it also to works, yet chiefly as rent, both one and other being denominat from what was the more eminent service arising from them. Hereof some footsteps visible in the 66. of King *Edw.*'s Laws.

Cot. land.

The second (*Cot. land*) that belonging unto, and occupied by the *Cotarii*, *Cotarii*, or *Cottarii*, a sort of base Tenants, so called from certain *Cotes*, or *Cottages*, small sheds like sheep-cotes, with some little modicum or parcel of land adjoining, originally assigned out unto them in respect and recompence of their undergoing such like servile works, or baser services for their Lords, as before expressed.

Ayer land.

The third (*Ayer-land*) much the same with that before called *work-land*, coming of the French *Ouvrier*, to work, or labour, but chiefly differing from that in this particular, that the services thereof consisted especially in carriages, as of the Lords corn into the Barn, to Markets, Fairs, and elsewhere, or of his domestick utensils or household-provision from one place to another, which service was of diverse kinds, sometimes by horse, thence called *Horse-average*, other while by foot, thence termed *Foot-averaga*; one while within the precinct of the manour, thence named *In-averaga*, another while without, and then called *Out-averaga*; the Tenant in the mean while being known by the name of *Avermannus*.

Horse-averag

Foot-averag.

In-averag.

Out-averag.

Draf-land.

The fourth (*Draf-land*) that holden by the service of driving, as well of Distresses taken for the Lords use, as of the Lords cattle from place to place, as to and from Markets, Fairs, and the like: more particularly here in Kent of driving the Lords hogs or swine to and from the Weald of Kent, and the Deans there, thence

called

called of old *Drosdens*, namely from the droves of hogs *Drosdens*, sent thither, and there fed and fattened with mast, or pawnage, the Driver whereof was vulgarly called *Drosmann*.

The fifth (*Swilling-land*) that let out or occupied *Swilling-land* by *Swillings*, *Swollings*, or *Sullings*; that is, Plough-lands, coming of the Saxon *sul*, a Plough, (in which notion the word may extend to all arable land) the quantity whereof was various and uncertain, containing more or lesse according to the nature of the land, a Plough being able to master a greater or lesser quantity, thereafter as it is in quality. This (of *Swillings*) I find to be a word proper to the Kentish, even from the Conquerours time, (to look no higher) whose Survey (commonly called Domesday-book) shews *Suling* (and the like), to have been a term in those dayes peculiar to this County, whereby to expresse the quantity of their land, whilst Hide, and the like was of like use elsewhere. To this head may be referred *Hide-land*, *Yoke-land*, *Aker-land*, *Rod-land*, and the like, being *Hide-land*, quantities or portions of land let out and occupied by *Yoke-land*, the Hide, Yoke, Aker, Rod, &c. and denominated *Aker-land*, accordingly. *Rod-land*.

The sixth (*Mol-land*) was the same with *Up-land*, *Mol-land*, of the Saxons called *Dynland*, standing in opposition to Meadow-land, Marshland, or Low-land; the Tenant whereof was wont to be called *Molmannus*: the word (as I conceive) being derivable from the Latine *Moles*, a heap, of which see further in the Surveyours Dialogue. Hence probably the name of that place in Ash (the seat and patrimony at this day and from good antiquity, of the *Harflers*, formerly of the *Septuans*,

families both in their time adorned with Knight-hood) called *Arrelland*, being of an advantageous situation for the overlooking of a large level of a rich *Merishland*.

Bar-land. The seventh (*Bar-land*) that which was held by the service of bearing, or carrying the Lords or his Stewards provisions of victual or the like, in their remove from place to place, such Tenant being thence called *Barman*.

Smiths-land. The eighth (*Smiths-land*) that, in respect whereof the Tenant was bound, as to undergo the Smiths or Farriers office and work, in and about shoeing his Lords horses and carriages, so also to find and furnish him with materials (of iron) for that purpose.

Ware-land. The ninth (*Ware-land*) the same that otherwise called in the Latine of the times, *Terra warbata*, or *Terra jacens ad mare flum*, that is land lying, or suffered to lie fallow, coming from the French *Gare*, (their *g* here, as in many other words, being turned into our *w*) whence with them *Terre garée*, for old fallow-ground.

Terra fusanna. The tenth (*Terra fusanna*) land, not much unlike unto, if not the same with the former, being superannated land, or land with over much tillage worn and beaten out of state, and therefore of necessity lying over year, and being converted from tillage to pasture, until it may recover state, and be fit for tillage again, the term or denomination coming from the French *Susanné*, signifying stale, grown old, past the best, or overworn with years.

For-land. The eleventh (*For-land*) the same (I take it) that we otherwise use to call *Fore-aker*, whereof see more in Sir Henry Spelman's Glossary, verb. *Forera*.

Bord-land. The twelfth and last (*Bord-land*) that holden and occupied

occupied by the *Bordars*, or *Bordmanni*, the same (I take it) with the French *Bordiers*, i. e. Villeins or Cottagers, such as hold by a servile, base, and drudging Tenure, of them called *Bordage*. You may read both of the one and the other in the old grand Customier of Normandy, cap. 53. Within the signification of the word (*Bordland*) are comprehended also (as is already hinted in this chapter) lands holden in Demefme (of the Saxons termed *Inlans*) and designed to the furnishing of the Lords board or table, and the maintenance of him and his family in victual. For which see *Bracton*, lib. 4. tract. 3. cap. 9. num. 5. Which kind of land the Saxons used to call *Foster-land*, *quasi* fostering land, that is land *ad victum*, a term obvious and very frequent with the religious men of those dayes, who as they had their special Firms and portions of land assigned them *ad victum*, so had they other as peculiar to their clothing or apparelling. land *ad vestitum*, which, from the Saxon *repuß vestu*, or *vestimentum*, they called *Serud-land*. They had withall their *Sextary-land*, which was such as appertained to the office, and was intrusted to the care, of the Sacrist or Sexton, and was designed chiefly to the upholding & maintenance of their Church or Temple, both in the Fabrick and Ornaments. Besides all these, they had their *Almshand*, which was that appropriate to their Almonery, a parcel or place of the Monastery set apart for harbour and relief to such poor people (for the most part) as were allied, or otherwise related to the Monks.

I may not here omit *Over-land*, a name attributed to such land as lieth by or along a Rivers side, and coming of the Saxon *open*, i. e. *margo*, the bank of a Ri-

ver,

Vide Fletam,
lib. 5. cap. 5.
parag. 18.
Foster-land.

Serud-land.
Sextary-land.

Almshand.

Over-land.

ver: whence that known place name lying by London, alongst the Thames-side, called *St. Mary Overies*: compounded of the foresaid *Over*, and *Ret*, betokening a River, or Current of water. Land of this name we have at or neer Ash in Kent, alongst the Scour-side, running to Sandwich Town and Haven.

Monday-land.

I might to these add *Monday-land*, and the like, which with it fellows, borrowed denomination from this or that week day, and that in respect of the Tenants obligation to such or such servile works or services, upon such or such dayes of the week, in respect of that land. But I purpose to digresse no longer, having for brevity sake, wittingly omitted the quocation of the places where these several names occur, which otherwise I should willingly have added, and shall onely in the Appendix, Scriptura 23. present the Reader with a copy of a Saxon charter making mention of those two, *Fosterland* and *Scrudland*, as somewhat more remarkable than the rest.

Now returning to our *Boecland*, you must know, that notwithstanding that introduction of new Tenures by the Conquerour, we did not streightway forgo our *Boecland*, that kind of Tenure I mean, but retained it both name and thing, witnesse first what occurs in (u) a Deed sans date of certain messuages, by *Roger*, son of *John*, Alderman of Radingate in Canterbury, granted in Frankalmoigne to *St. Laurence Hospital* neer the city, founded by *Hugh*, of that name the second. Abbat of *St. Augustine* there in the year 1137. viz. *Duo messuagia qua sita sunt in terra d. Boecland, de qua nulli respondeo*, &c. where we have not onely *Boecland* mentioned, but the nature of it also in part let forth. Witte

(u) In lib.
Hosp. S. Lau-
rentii propè
Cantuar.

written in (2)
and 2. 2. 2.
written in
Canterbury.

bury houses and grounds this day pay no Quit-rent
small, which others in the same place, though holden
in Free Burgage are known to do. But considering af-
terwards with my self, that *Buriall* often occurs in
Landlors (as they were called) of the place in the Sax-
ons time, I at length concluded, at least conceived, such
houses and ground to be the remains of our ancient
Buriall, which seemeth to be still surviving in them, as
if holden in *Allodium*, *plene jure*, without all manner
of chargeable service, and no other (probably) than
part of those eighty acres of land (or the like) in Can-
terbury Survey in Domesday book thus expressed:
Ha. vintiam (it is spoken of *Ranulfus de Columbertis*) *quar-*
ter viginti acres terra super hac quasi seminant Burghenses
in Alodio (so I read it, rather than *Alodia*) *de Rege*, or, &
a very ancient book sometimes of *St. Augustines* Ab-
bey, now with the Kings Remembrances in the Ex-
chequer reads it: *Novissima. i. Burghenses quod idem Ra-*
nulfus tenuit quatuor viginti acres de Alodio eorum, &c.
The same Domesday book (to prosecute this discourse
of *Allodium* a little further) makes mention particularly
of some *Allodiaris* by name in that Kentish Survey,
and there also we may read to this purpose: *De fisis-*
fallibus habet Rex super domos Alodiaris totius Com-
itatus Chene, & super domibus Ipsorum. And: *In Cantia*
quando moritur Alodiaris, Rex inde habet Rationem
terrae, excepta terra S. Trinitatis, & S. Augustini, & S.
Martini, & excepta ibi: Godefridus de Harve, & Godefridus
de Carlesford, & Almodd Cile, & Eadw. filius, & Eadw. de Cille-
ham, (these last three are mentioned also in the Survey
there of Canterbury, amongst whose whole lands were
Ray and Sa-fine, i.e. quit against the King of *Barland*

Allodiaris.

Sac :) & Turgis, de Norman, & Acw. Super istis ha-
 bet Rex forisfacturam de capitibus eorum tantummodo, &
 de terris eorum habent Relevamen qui habent suam Sa-
 cam & Sacam. I rather read is habent, than habet Rele-
 vamen, because by charters both of the Cathedral and
 St. *Augustines* Abbey, of those succeeding times, I find
 the Monks in each place priviledged with the liberties
 of Sac and Soc, &c. over their *Allodiaris*, as termed in
 the charters of the latter place, over their *Thegnas*, or
Theines, as in the former, in what form of words see in
 the charter of each place, for illustration sake, copied
 in the Appendix here, Scriptur. 19. and 20. And least
 these various terms (*Allodiaris* and *Thegnas*) rendring
 them of a seeming difference, should occasion any su-
 spicion of their being not the same, for your satisfaci-
 on to the contrary, take this note along with you, that
 those who in the Latine charters of St. *Augustins*, are
 termed *Allodiaris*, in the very same charters exhibited
 in English, (like as in those at Christchurch) are stiled
Thegnas. But what (may it be ask'd) were they then
 which in some very ancient Records of that Cathedral
 are named *Thengas*? Indeed I have met with a Record
 there, (and you may meet with it here in the Appen-
 dix, Scriptur. 21. a choice one in my account, as the
 book it self was it seems in his, who in the margin of
 the first page of it long since left this note: *Custodiamus*
hunc iste libellus, quia nisi appareat non valere, bene ta-
men valet, & est libellus satis pretiosus monachis Ecclesie
Christi :) which makes no slight mention of such
Thengas belonging to the Monks there, in these very
 words : *Quia vero non erant adhuc tempore Regis*
Willmⁱ milites in Anglia, sed Thengas, praecepit Rex, ut

Thegnas.

Theines.

Thengas.

as others were from *Franks* turned into *Angles*, and
 their land consequently subjected to military force and
 tenure. Whether the name of *Denon* was taken up
 from such a cause, our learned Glossarist, from the Re-
 cord by him there cited, is signed for it, some reason
 there is to doubt from the opinion of (the words Syn-
 onimy) *Thengas*, in the Record of Christchurch, is
 known in that notion here before the conquest,
 whereas the other fives then took name first after it.
 It before it, (as the Christchurch Record, there cited,
 me thinks, some cause to suspect the same, stamped
 from *Thengas*, i. *Thanes*, which clearly that Cathedral
 had before the conquest. On the other side, if the Re-
 cord (in the Glossary) be right, and that withall *Then-
 ges*, *Dracces*, *Thengas* and *Allodarii* be (as all the
 fore-cited authorities laid together, they seem to be)
 Synonima's, terms identical, then were our Kentish
Allodarii, such as had not revolted from the Crown,
 by opposing the Conquerour, whether by their aid or
 counsel, but had peaceably submitted to him and his
 Empire, whilst consequently others of the county op-
 posing, withstanding, and resisting him and his co-
 ming in, had *in fact* forfeited their possessions: and
 if so, then *Spots* history, whereof so much before, may
 well deserve yet another dash, or, if you will, another
 Spots. But thus far of *Allodarii*, As also of what I call-
 ed it, *Bedland*, which, as to the name, almost quite
 ceased with the Saxons, though, as to the thing, it sur-
 vived some time after, under the notion of *Bedland*,
 into which it was translated of the Normans here, and
 of them so altered also in the very thing, that it became
 thus far subject unto Tenure: as in the opinion of lear-

(a) Mr. Sel-
den's Titles of
Hon. 2d Ed.
4th. pag. 39a.

(a) 11. Jan.
Regl. pag. 61.
Cope Indit.

2. 1. fol. 1. & 5.
Covell's Inter-
peter in verb.
Fol.

(b) Covell, ubi
supra.

and (a) men, it was land (as we say) holden, and so accounted, whence it was that common and received (a) anxious amongst us, that in the Law of England (since the conquest at least) we have not properly *Allodium*, that is, not any Subjects land that is not holden: in which respect, as one (b) saith, he that can say most for his estate, saith thus: I am seized of this or that land or tenement in my Domain as of fee, *Seisitur inde*

in dominica mea ut de feodo, &c. And 'tis most true at this day, but under favour, it was otherwise since the conquest, witnesse (besides Domesday-book, where the opposite to Fee, *Allodium*, is very obvious) those charters afore-cited, the one of St. Laurence, the other of Christchurch, (and such like) mentioning land holden by the Authours or Owners, for which they were responsible to none, as also the Pinenden plea for the Archbishops lands of Canterbury, and the grant to *Allodium* mentioned in *Eadmerus*, evidencing clearly the contrary, and asserting (some of them) the continuance of such creations from the King, to whom, after *Tenetur Rossensis*, it peculiarly belongs to grant out, or passe land in that kind: *Curia Alodii ad eternam hereditatem*, being there reckoned and ranked *inter consuetudines Regum inter Anglos*.

Now as our *Boceland* did not presently expire with the Saxons, its first Authours, upon their vanquishing and supplanting by the Normans, so neither did our *Folcland* but survived and continued after the conquest, and remains unto this day, though not in the very name, yet in the thing and substance. For, as aforetime the Saxons had their *Ceorlas*, *Gebures*, *Folcmen*, &c. as afterwards the Normans their *Villani*, *Barbanni*,

Catarii,

Folcland.

CHURCH, &c. so what the former held was called *Feudal-land*, & *Feudal*, &c. and was opposed to *Seignior*; what the latter Village, and (in some sense) *Storaga*, opposed to Chivalry; Knight-Service, &c. and in all likelihood intended by that *Rusticana servitus* occurring in a charter of *Waldoburgh* *Abbatibus*, granting the abbey of *Betrey* to the Church of *Rochester*. *Quod si aliquid de pradiis domini in rusticanam servitutem translatum est*, &c. as it is in Mr. *Selden's History of Tithes*, cap. 11, pag. 315.

As for the original of *Storaga*, there (b) are three references (for the finding of it) to a notable passage in *Gerardus Tithurienensis* his book intituled *Dialogus Scaccarii*, who lived and wrote in *Hen. 2.* dayes, which (to bring the Reader better acquainted with the state of affairs in the disposal of our Countrey-mens Free-hold in those elder times, when as the English State was newly moulded) I here offer to his view: *Post Conquisitionem*, &c. i. After the (c) Conquest of the Kingdom, and the deserved subversion of the Rebels, when the King himself with his Nobles surveyed his new Countrey, a diligent inquiry was made, who they were, which taking part in the war against the King, had saved themselves by flight: to all these, like as to the heirs of such as had fallen in the war, all hope of any lands, (d) possessions, and (e) rents, which formerly they enjoyed, was cut off. For they accounted it no small favour to escape with life under enemies. But those who when summoned, came not to the war, or being occupied in household or other necessary affairs, were absent, when in proof of time by their absence (f) servitableness, they had ingratiated themselves with their Lords, with some hope of success, their children.

(b) Vide Ad-
ve sup. in Mat.
Paris Hist. &
D. Roger.
Twyden. Pro-
fat. in LL.
Hen. 1.

(c) I turn con-
quisitionem, so,
in analogie to
conquerors
turning by
Conquerors.

(d) Or, *Perma-
nent*.
(e) Or, *Reve-
nues*.

(f) Or, *Obsequi-
vance*.

throughly taught by Littleton, In the book of Tenures, where treating of Socage, he saith, that the tenure why such Tenure is called, and hath the name of Tenure in Socage, is this: because (saith he) *Socagium idem est quod seruitutis Socu, & Socu idem est quod caruca, &c.* A *Soc* is a plough. In ancient times (for so he adds for further confirmation) before the limitation of times of memory, a great part of the Tenants which held of their Lords by Socage, ought to come with their ploughs, every one of the said Tenants for certain dayes in the year, to plow and sow the Demesne of the Lord. And for that such works were done for the livelihood and sustenance of their Lord, they were quit against their Lord of all manner of services, &c. And because that such services were done with their ploughs, this Tenure was called Tenure in Socage, &c. Thus Littleton, followed by the generality of our common Lawyers and others since, not without a kind of popular error, as under favour I conceive, and with submission to better judgements, shall endeavour to evince, without check (I hope, for presuming to contrarie so great, so many, and those eminent Lawyers, wheretoas here I oppose them not in point of Law, but only in matter of fact.

The first exception then that I take against this opinion, is its inconstitencie with many several species of Socage had, or had been to be of Socage kind or tenure, such as *Petille Socage*, *Frankalmoigne*, *Free socage*, *Free socage*, by *Deine services*, and the like, which have no manner of relation to the Plough, or manner of Husbandry, as originally they say Socage had, and therefore still retain the name, though the cause whereupon it first grew be taken away,

(h) *Idem*, in voce.
 (i) *Idem*, in voce.
 (j) *Idem*, in voce.
 (k) *Idem*, in voce.
 (l) *Idem*, in voce.
 (m) *Idem*, in voce.
 (n) *Idem*, in voce.
 (o) *Idem*, in voce.
 (p) *Idem*, in voce.
 (q) *Idem*, in voce.
 (r) *Idem*, in voce.
 (s) *Idem*, in voce.
 (t) *Idem*, in voce.
 (u) *Idem*, in voce.
 (v) *Idem*, in voce.
 (w) *Idem*, in voce.
 (x) *Idem*, in voce.
 (y) *Idem*, in voce.
 (z) *Idem*, in voce.

the peace. (7) *immunitas*, an immunity from service in war, or from warlike. (8) *honorant*, the Lords protection to his men, or Tenants. (9) *honorant*, being of a double sense, signified both a privilege or protection against assaults upon a man in his own house, or under his own roof, and a liberty or franchise to hold plea thereof, with power of animadversion by mulct, or fine. (10) *ralbroene* imported a liberty or privilege of Foldage, debarred and denied unto Tenants in times past, and by the Lord, for the enriching his own Demesne lands, reserved to himself. Hence their word, *Faldwrit*, for him that enjoyed such a liberty. Shall I now give you one example from the Normans? *Natus enim Sacrum habes impune peccandi*, say the Laws of Hen. 1. cap. 24. speaking of Barons having *Soke*. And (to enlarge yet a little further touching *Soc*, &c.) as it signified a Liberty, Immunity, Franchise, Privilege, Jurisdiction, &c. so withall a Territory, Precinct, or Circuit, wherein such a Jurisdiction, and such Privileges were to be exercised, and that as well in a simple, as a compounded notion. Hence (for the former) *Socbs* of this and that place so obvious in Domesday-book, whereof some instances in *Inquisitum*, by name, *Soca de Donnedike*, *Soca de Rahistone*, *Soca de Tode*, *Soca de Aunbury*. In this sense it frequently occurs in Hen. 1. Laws, where you may also often meet with (11) *Soca Placitorum quam quidam habent in suo de finis*, and other such like passages. In the same sense the Register hath it, fol. 1. a. as also *Bracton*, lib. 3. tract. 1. cap. 2. num. 3. In the Statute *de Gavolois*, made anno 10. Edw. 3. (where the Custodes, the Guardians of the Soke, are termed *Sokereis*, of Dr. Cowel turned by Remi-

Faldwrit.

1000. 2. 23. 102
 1000. 2. 23. 102
 1000. 2. 23. 102

(c) Cap. 9.
 (where I read
 Placitorum for
 Placitorum)
 and elsewhere.

Sokereis.

Rent-gatherers) and in the Statute also 35. Hen. 3. cap. 29. it is used accordingly. Thus of *Soke*, or *Soken* simply. In composition it occurs often with *Port*. As for example, the *Knights gild*, sometime in or near East-Smithfield London, erected first by King *Edgar*, and confirmed with some enlargement afterward by succeeding Kings, (being a portion of ground enfranchised with special liberties, to be enjoyed within that extent of it set forth by (*d*) *Stow*) was anciently called (*d*) *Survey* a *Soke*, and afterwards, (because lying by Eald-gate, now *Algate*, *Port* being added, or rather preposed to it) *Portoken*, being for extent and otherwise, I take it, the same, which at this day is known there by the name of *Portoken-Ward*. Here now we find it restrained to a part onely of a City, a particular Ward, but in some ancient Charters of Liberties granted to several Cities, and other like places of this Kingdome, and particularly to London, you may find it spreading it self to the utmost skirts and liberties of the City without the wals, as in *H. 1.* (*e*) Charter to that City, anno. 11. of his reign: *Et quod infra muros civitatis, neque in Portsokene, nemo capiat hospitium per vim, sed per liberationem Marescalli, &c.* The like occurs in several charters to the city of Canterbury, whereof one 'tis *Henry the seconds*) thus: *Concessi etiam eis quietantiam murtheri infra urbem, & in Portsoken, & quod nullus, &c.* Another (of *Henry the thirds*) thus: *Concessimus etiam quod nullus de civitate vel Portsoken sua capius vel reclusus de aliquo crimine vel foris facto pro quo debeat imprisonari, imprisonetur alibi quam in persona ejusdem civitatis, &c.* A little after: *Et quod nullus externus faciat Forfallum in Civitate praedicta, vel in Portsoken sua*

London, pag. 119. 935.

(e) c. 12. in. H. 1. par. 4. pag. 152.

ad

ad *dominium Civium*, &c. I spare to add more instances, it being plain enough by these, that the liberty of the place is the full extent of it is intended by *Forfeits*: you may call it not improperly, the Extent of the Franchise. The fore-cited Statute 32. Hen 8 cap. 29. by occasion there given to mention the Soke of Oswestry in Nottinghamshire, pleth the terms of *Lordship* and *Soke* indifferently, to expresse the territory wherein the custome there mentioned took place, whereby it seems our term (*Soke*) also signified a Lordship, the word extending thither, I conceive from the extent of the privilege so called throughout the whole compass of the Lordship, viz. that whoever is dignified with it, and its constant concomitant *Ser*, as regularly all Lords of manours are, hath that dominion over all men and matters of his Territory or Lordship, as freely to hold plea, and have and take cognizance of the one, and between the other, in such manner, I mean, as in the language of Hen. 1. (f) Lawes recordeth his *Ser*, his cognizance, as being simply *Regalia*, remaine aduonous or capital matters reserved to the King and his Justices. Hence, to have *Ser*, or to be so privileged, after a book of Churchchurch Canons, is *monachis sancte courtis de se habere*, answerable to that of *Monach*, lib. 1. cap. 47. *Ser* (saith he) *beneficial libertas* *curia* *honoraria*, *monachis* *apostolica*, as also somewhat I read in an old MS. amongst other etymologies of this kind: *Non quod sit et quodam libertas* *per unum* *dominum* *curia* *et* *libertatem* *facit* *monachum*. A great (x) Lawyer of our times gives it this definition: *Ser* (saith he) *is a power or jurisdiction to have a free Court, to hold plea of unresolvability*, *et*

(f) Cap. 11.
whereof or ex-
cedit, I read
excedit, accord-
ing as the
24th chapter
hath it.

(x) Sir Edw.
cotte, Instit.
par. 2. p. 230.

covenants, and trespasses of his men and tenants. Within a little after he proceeds to derive it, in a different way (though not without some company) to what is here above proposed, how rightly *judicent alii*. Shortly, *Soc*, *Soke*, *Socne*, and the like, (not to mention its derivation in *Clement Reyners* (b) *Onomasticon*, and some others) betokened we see, both a Liberty, Priviledge, Franchise, &c. and a Precinct, or Territory, wherein such a Liberty, &c. was exercised, if you will, a *Sok-mary*.

(b) Before
his Apostolat
Benedictino-
rum in Angl a.

And resolving our *Socage* (the Tenure so called) to be deriveable from *Soke*, considered under one of these acceptations, I stood irresolute a while to which of the twain I should referr it. Once I intended to pitch upon the latter: and then me thought, as the territory, precinct, extent, circuit, &c. of a Lordship or Manour was called *Soca*, and *Socmanria*, so probably the men of that Territory, Precinct, &c. in respect of their relation to that *Soke*, and their dependance upon it, and the Lord thereof by Tenure, were termed *Socmanni*, that is, men appertaining to the *Soke*, or Lordship, *quasi Soca ascriptiis*; *homines Soca*: and consequently, as in that respect the Men were called *Socmanni*, so their services, (those duties in works, provisions, moneys, or otherwise, which by their Tenure they were to return to the Lord of the *Soke*) were called *Socage*; tract of time having added to *Soke* or *Soc*, (what a (i) famous

(i) Sir Edw.
Coke, Institur.
par. 1. fol. 96 a.

Lawyer of these times calls a legal termination) *agium*, in composition (saith he) signifying service or duty, as *Homagium*, the service of the man; *Escuageum*, *Servitium Senci*, &c. And so the parts being put together, (*Soc* and *agium*) it comes forth *Socagium* in Latine,

T
Socage

Socage in English. Thus, I say, was it sometime in my thoughts to have derived *Socage*, and indeed not altogether improperly in a large sence; all sorts of Tenants of or to a *Soke*, (the *Casus Tenentium aut Vassallorum manerii*, the *Homage*, as sometime called) being from their relations to the *Soke* or Lordship, and the Lord thereof, not unliely called *Sokmann*, and their service & tenure consequently *Socagium*. But at length, upon second thoughts, I concluded this somewhat too large and vast a derivation, as being comprehensive of all sorts of Tenants, *Villeins* and all, which, with the (k) Authour of the *Terms of Law*, I conceive to be improperly called *Sokemen*, of their tenure *Socage*. Besides, when I first pitch'd upon that derivation, I conceived their tenants whole service to be (if I may so call it) *Sokal*, respecting onely the *Soke*, not foreign, whereas afterward I found that *Socage*-service was not so to be restrained, it being ordinary with Tenants in *Socage* to do service *extra*, or *fora*; *Socam*, as to ride with their Lord from manour to manour, (like the *Red-Knights* in (l) *Bracton*) to carry and pay rent to the Lord, and to deliver him corn and other provisions at his Granary or elsewhere out of the Tenants proper *Soke*, and the like: in which respect also with what incongruity are pure *Villeins* called *Sokemen*? since they are so far from being tied to the *Soke*, that they may be commanded out, and imployed abroad wheresoever the Lord shall please, as well without as within the *Soke*. Changing therefore my opinion, as to that derivation, and looking further back to that other (the former) sence of *Socage* Liberty, Priviledge, Immunity, Franchise, &c.) I resolved finally to derive and fetch it thence; and thus I make it good. Amongst

(k) In the word *Ville-nage*.

(l) Fol. 35. b.
& fol 79. b.

Amongst other sorts of land, our Books are full of that called *Terra servilis*, Villein-land, land holden in Villenage, servile land, suchnamely (for fuller explanation of it) as that holden at the Lords will, both for time and services; in both respects uncertainly; for time, it being in the Lords power (of old *(m)*) at least it was so) *tempestive*, or *intempestive*, to revoke, and resume the same out of the Villeins hands into his own, and for services, the tenant being altogether ignorant, and not knowing over night what service may be required of him the next morning. He might also have greater or lesser taxations laid upon him, at his Lords will: nor might he marry his daughter without a Fine to his Lord, for his leave and licence, & *ita semper tenebitur ad incerta*, saith my Authour. Now to defend land against the Lord from Villenage, and to come off acquitted of this servitude and servile condition, it was and is necessary of the tenants part to shew a tenure of his land, by opposite and contrary services to those in Villenage, that is, *per certa servitia*, by certain, expresse, definite, services: and, as otherwise it may be concluded, that his tenure is Villenage, so hereby, if the service be not Regal, or Military, it is as cleerly Socage. For, that *certa servitia*, are a Superseas to Villenage, and do make it to become Socage, proofs are obvious. To this purpose consult we *de Assen*, lib. 3. cap. 18. num. 9. as also *200. cap. num. 6.* where he is expresse for the tenants acquittal from all other services, (some being expresse in the Charter made him by his Lord) than what are specified therein: *Alia omnia servitia & consuetudines quas expresse non sunt in charta sua in se servitium et factum acquiritur*

(m) Vide *Braxton*, fol. 263. a. & fol. 187. a. 108 b.

(n) Vide *de Assen*, lib. 3. cap. 18. num. 9. as also *200. cap. num. 6.*

ex quo specialiter non operat. See him again, eod. lib. cap. 36. num. 8. at these words: *Com teneatur Socagium defendere tempore suum erga Dominum suum per certum redditum in pecunia numerata, vel per quid tale, quod tantundem valeat, quae constitunt in pondere, numero, vel mensura, in solido vel in liquido, sicut frumenta, vinum, alia, secundum quod redditus diversimode accipiuntur, &c.* Have recourse also to the same Authour, lib. 4. tract. 3. cap. 23. num. 5. at these words: *Dum tamen servitia certa sunt, si autem incerta fuerint, quaecunque fuerit tenementum, tunc erit Villenagium, &c.* Add, as agreeable herewith, that of Sir Edw. Coke, in his Commentary upon Littleton, Sect. 120. *To Tenure in Socage* (saith he) *certa servitia do ever belong.* Hence it is, that the Authour of the Terms of Law, expounding Socage, or tenure in Socage much after the same manner with Bracton, *ubi supra*, (to wit lib. 2. cap. 16. num. 9.) saith, that *to hold in Socage, is to hold of any Lord lands or tenements, yielding to him a certain rent by the year for all manner of services.* You see it proved then, that *certa servitia*, certain services, so they be not military, make a Socage tenure. The ground whereof is obvious, *viz.* that by such tenure (*per certa servitia*) the tenant hath a *Soke*, a privilege, an immunity, a *Quietum est*, as from Villenage in general, so from all villen, military, or other services than those by contract, or custome (n) charged upon him: a *Soke*, I say, whereunto *agium* being added, signifying the service or duty to be returned for that privilege, it comes forth *Socagium* in Latine, *Socage* in English, as, by putting *man* to *Soke*, the Tenant is signified, and called *Sokeman*. But if *Soke* here carry with it such a

(n) Vide L. 1.
Law, Confess.
apud Cl. Seld.
Not. ad Ead-
mer, cap. 33.
pag. 184.

Objection.

sence, (of Immunity, Discharge, Priviledge, &c.) how comes it then, to passe (may some perchance demand) that *liberum* is often found to accompany *Socagium*, as *liber* also doth *Sermannum*? For answer, I conceive, to distinguish Free Socage from Base. Not but that Base Socage had its priviledge as well as the other, as being holden by services set and certain, or determinate, but in regard those services regularly consisted in servile works incident to Villenage, the tenure gat the name of *Villanum Socagium*, to distinguish it from *Librum Socagium*, acquitted of those servile works, and consisting (s) in *denarii*. From hence also (such a *Soke*, such a Priviledge) it is, that the *Villanum Socagium* in the Kings Demesne is turned of (p) *Bracton* and others, by *Villenagium privilegium*. By the way, hence judge whether I am not right in my derivation of Socage from *Soc*, *Soke*, &c. a Priviledge, &c. when here you see *Villanum Socagium* of *Bracton* and others, rendred by *Villenagium privilegium*, i. e. priviledged Villenage.

Solution.

(s) *Bracton*, lib. 2. cap. 35. num. 1. The rest hence called *Quit-rent*.
(p) Fol. 7. a. fol. 170. a. fol. 272. a. fol. 209. a. *Fleta*, lib. 1. c. 3. p. 3.

'Tis time now that we inquire how this derivation will suit with those before remembred tenures, By *divine service*, in *Frankalmoigne*, *Fee-Firme*, *Petite Sergeanty*, *Esfenage certain*, *Burgage*, and the like. Where-to I answer, Very well. For, as they were all, through a tacite discharge from corporal service in warfare, excused from military Fee, or Tenure, so on the other side, by reason of an expresse tenure *per certa servitia*, or *per certum redditum*, common to them all but *Frankalmoigne*, they were rendred quit and free of Villenage, and consequently became of Socage tenure. As for *Frankalmoigne*, as it may challenge an interest in

the composition of Socage from *Soc* or *Soke*, and *agium*, to wit, in the former syllable, so on the contrary side, hath it as little to do with the latter, because such tenure is quit of all service whatsoever, as well spiritual, (unless (q) uncertain) as temporal. But because as it hath not to do with military service on the one hand, so neither with Villenage on the other, and hath its privilege expressed in that epithete of *Libera*, it is referred to Socage, as in some sort such.

This then is that (this tenure *per vasa servitii*) that makes tenure *By divine service*, of no relation to the plough, to become Socage. This makes also *Fee-ferme*, a meer censual service, (much in the nature of that (r) Lib. s. i. ff. *ag. vectigal.*) which among (r) Civilians is called *Ager vectigalis*) as being liable onely to so much yearly rent, without any other service regularly, unless Fealty, suit of Court, or the like, according as the Feoffment may run, and having nothing to do with the plough, to become Socage. This makes *Escuage certain*, another tenure of no relation at all to the plough, but *quatenus* Escuage, as it is simply Escuage, *eo ipso*, of (f) Knight-service, because by being certain it draws him not forth to any corporal service in war, to be also termed Socage, whilst contrarywise what is properly called Escuage, that namely which is uncertain, and so called, because (besides its subjection to Homage, Fealty, Ward, and Marriage) it is uncertain how often a man shall be called to follow his Lord into the wars, and again what his charge will be in each journey, from being liable, say to this uncertainty of duty is (f) Knight-service. Hence (fourthly) it is that *Socage* (a tenure no way smelling of the plough, or tillage, being con-

(q) Dr. Cowell.
Interp. verb.
Escuage.

(f) Br. ff. fol.
37. a. & 79. b.

(r) Lib. s. i. ff.
ag. vectigal.

rant and conversant onely in cities and towns) because holden for a certain annual rent, becomes with the rest Socage. Hence also our Kentish *Gavelkind*, considered in its name or term, (betokening censual land) of no affinity with the plough, or plough-service, because, I say, holden *per corna servitia*, comes to be called Socage. The like might be said of *Frank ferme*, and o-
ther the remaining species of Socage-land: one and all, as properly so called, as rightly, and with as much reason referred to that head of our English tenures, as that which for its plough, or tillage, service is said to be more peculiarly so called, standing not in need of that distinction which the common opinion useth to bring them within the compasse of it, called *ab effectu*, because of like effects and incidents belonging to them with Socage tenure; a distinction by this derivation rendred frivolous and needlesse, and under favour therefore as fit to be laid aside, as their (u) assertion is to be retracted, who, to vindicate the retaining of the name of Socage, as of use onely to distinguish that from a tenure by Knight-service, affirm that the cause wherupon the name of Socage first grew, *viz.* Plough-service, is taken away, by the change of such service into money, whereas presupposing our present derivation of Socage to be admitted, both name and cause still continue. Thus much for Socage, a term that to me first occurs in *Glanvill*, never as yet in any elder Record. In a Roll of (x) Accompts of the Arch-
shop of Canterburies mannours, for the sixth year of Archbishop *Baldwyn* (*Glanvills* Comtanean and Companion in his voyage and expedition, with King *Richard* the first, to the holy land) which by comparison

(u) *Coke In-
stit. par. 1. fol.
86. b. Bacons
Elements,
tract. 1. p. 36.*

(x) In Ar-
chiep. Archiep.
Cant.

tion was the year of our Lord 1190. it occurs by the name of *Saggagium* thus: *Super Saggagium London remanent xxd.* and this in Croydon manour there, amongst the expences and deductions following the receipts of that year. Which I mention, not as conceiving it no elder than *Hen. 2.* dayes, yes I rather hold *Sermannus*, *Sermania*, and *Socagium* to be relatives, and consequently that where the one occurs, the rest are implied: but *Sermannus* is obvious in Domesday-book, and lesse ancient therefore. I perswade my self *Socage* and *Sermanny* are not.

Virg. 5. Ac-
meid.

Nunc age, carpe viam, susceptum per fice munus.

Now therefore to come to our *Quere*, (whether *Gavelkynd* be a Tenure or a Custome) and give it an answer: I confesse there are that in some sort hold the negative, as who will have it to be a Custome accompanying the land where it obteineth, rather than a Tenure whereby the land is holden, holding the whilest the Tenure to be *Socage*. And of this opinion (y) Mr. *Lambard* doth more than seem to be. Now between Tenure and Custome in this case with us, the difference, as I collect, stands thus; admit it onely a Tenure, and then the nature of the land is not concerned in point of descent; so that in some cases (as the escheat of it by Death or *Cessavit*, to the Lord that holds over by Knight-service, or to the Crown by forfeiture in treason and the like) it ceaseth to be any longer of *Gavelkynd* nature, in point of descent, and goes not, as before to all, but onely to the eldest of the sons, according to the course of the Common Law: whereas

(y) *Terribul.*
pag. 535. 536.
537.

whereas if it be a Custome following the nature of the land, then it is, say they, inseparable from that land where it obtaineth, inasmuch as notwithstanding this escheat, or wh'tever other alteration of the tenure, it remains, as before, partible among all the sons, or other heirs where sons are wanting. But to the point. To prove *Gavelkynd* to be a tenure, I shall not need, I think, to multiply authorities, the generality of those ancient deeds that I have seen for the granting lands in *Gavelkynd* (whereof some are exhibited in the Appendix) are wont to have their *Tenendums* (the usual and more proper place for the creation of a tenure in any kind of grant) thus phrased: *Tenendum* either *ad* or *in Gavelikendam*, or the like. The office recited of Mr. *Lamhard*, in his *Peramb.* pag. 540. found after the death of *Walter Culpepper* is alike phrased: *Tenuis in Gavelkind* being a much repeated passage in it. The Statute 18. *Hen. 6.* cap. 3. in terms calleth it a tenure, taking knowledge, that there were not at that day within the Shire above 40. persons at the most, which had lands to the yearly value of xx. pounds without the tenure of *Gavelkynd*, and that the greater party of this County, or well nigh all, was then within that Tenure. And this alone (which I shall add) may evince and clear it to be a tenure, that since the Statute of *Quia emptores terrarum*, anno 18. *Edw. 1.* prohibiting the subject to let land to be holden of himself, as there are not to be found any more grants of land (2) *pro homagio & service*, so neither in *Gavelkynd*. For brevity sake, I will urge no more authorities of this kind. Being thus then apparently a tenure, how cometh it to passe that we so usually call it the *Custome of Gavelkynd*, seldome

Flota is expressed for this, lib. 6. cap. 17. pag. 17. where h. f. lib. 1. in tenura de Gavelk. n. de. vel alibi, ubi terra p. a. b. lib. 1. Sec. See Reg. it. orig. fol. 78. b.

(2) *Spelm.*
Gloss. *erb.*
Homagium.
Object. ou.

146 *Gavelkynd-partition, whether*

Solut^{on}.

either making or finding mention of *Gavelkynd*, but with that adjunct, and under that notion of *Custom*? Indeed the property of equal partition is and hath so long been of that eminencie in our Kentish *Gavelkynd*, and it so much celebrated for that property, that as if it were the sole and onely property of it, all the other, in respect wherof this land may as well be called *Gavelkynd* as for this, are as it were forgotten, and that onely carries away the name from its fellows: whereas that of Partition (as hath been said before) is but one among the many other properties and customes in our Kentish *Gavelkynd*, such as *Dower of the Moety*;

(a) Hereof see *Bracton*, fol. fol. 313. a.
(b) Whereof also in him, fol. 176. b.

(a) *Loss of Dower by marriage before or after assignement*; (b) *Not to forfeit lands for Felony*; *Power of alienation at fifteen years of age*, and the rest obvious in the Kentish Customal. And because this, of Partition, amongst the rest, properly depends of *Custom*, as thwarting the course of the Common Law in like case, hence the *Quare* grew at first, whether *Gavelkynd* were a Custom or a Tenure. Indeed a very improper and incongruous *Quare*, and occasioned by the want of that distinction of the *Genus* from the *Species*, which through inadvertencie are here confounded, *Gavelkynd* being the *Genus*, & *Partition* the *Species*. So that if we shall but *reddere singula singulis*, this doubt will quickly have an end: *Gavelkynd* generally spoken of and in grosse, is the Tenure; particularly, and with reference to this Partition, it is a Custom accompanying the land of that Tenure. Or, if you rather will, *Gavelkynd* is the Tenure; *Partition*, and the other properties, the Nature.

Gavelkynd-partition, whether inherent in the land, or not,

Which Solution gives occasion of another *Quare*,
and

and that indeed a main one: *Whether* (namely) *this Custom of Partition in Gavelkynd-land, be so inherent in the land, and so inseparable from it, that notwithstanding the Tenure of the land be altered, yet the land shall still retain this property?* No more (I take it) than the rest of the fellow-properties as much depending upon Custom as that, and for which the land may deserve the name of *Gavelkynd*, as well as for that, and therefore some perhaps will say it shall retain them all indifferently. I shall not here ingage as an opponent, onely invited by this fair occasion, crave leave to propound Academically, what in like case I find delivered by others, conducing (in my judgement) to facilitate the resolution, leaving it to such as have more will to debate, and better skill to decide, the question than my self, to give a fuller and more peremptory resolution in the point. I may (I take it) not improperly state the question thus: *Whether the person in this case shall follow the condition of the land, or on the contrary, the land that of the person.* The former (it seems) takes place in Paris, the French Metropolis, by the custom of the place: whence that of *Choppinus*, treating of those Customs, pag. 316. *Parisiensi autem municiplio* (saith he) *quod gentilitia pariter fulget Nobilitate clarorum virorum, usus familia herciscunda minus est abnoxius invidia. Ubi scitices, non personarum, sed fundorum conditio nobilis, plebeiæve partes assignat.* To which he adds a little after: *Haud ideo tamen dividendarum hereditatum ratio immutata est Parisiis: cum nobiles fundos, plebei nobiliter, & ignobiles a quo jure generosi invicem partiantur.* To the same purpose (c) our Author elsewhere tells us, that *prisedo quodam Gallici*

(c) De morib.
Parisiis. p. 57.

(d) De Do-
man, Franc.
p. 40.

fori usu, plebeius fundus haud ideo pristinam exuebat conditionem; quod à recto ipsius Domino ere comparatus esset: Ni ejus nomine comparator in clientelam se, unà cum superiore fundo suo, ad patronum contulisset; which his margin ell(where (d) records thus: *Ancienement les rotures acquises par le seigneur direct, se partageoient roturierement, si non que le dit acquerneur les comprins en l'adveu de son seuf, le rendant au superieur.* Thus went (it seems) the more ancient Custome in those parts. But *tempora mutantur*. The case of latter times is altered there, as the same Authour gives us to understand in both the last fore cited places: *At posteriori avi Jurisprudentia, mutatis calculis, novam invenit servientis fundi unionem tacitam, & consolidationem cum alio dominante, ac parem adeo utriusque qualitatem praenobilem: Nisi illius emptor subinde contestationem interposuisset contraria voluntatis.* Thus in the former place. In the latter thus: *Nostra tamen aetatis moribus, diversum obtinuit, censuales nempe & obnoxios agros solà per rectum Dominum acquisitione, prorsus uniri, in unumque redigi cum pradio dominante: nisi protinus emptor contraria voluntatis testationem interposuisset.* The effect of both is this, that Censual lands by purchase coming unto the direct Lord (the Lord of the Fee, or Over Lord) are, *ipso jure*, Feudal, and shall accordingly descend, as thereby re-united to the Fee, unless the buyer, at the time of purchase, do protest to the contrary. Will you please to hear his reasons? *Unionis nempe vis illaeò producitur, ut ignobile pradium, militari junctum, nobilitetur: eque plebeio ac soti vectigalibus obnoxio, transeat in feudalis clientelae sortem liberiores.* Thus he, *De moribus Parisior.* pag. 58. Much what one with that in the

the other place (*De Domanio Francia*, pag. 41.) *Quoniam tacita pradiorum unione, confusa erant jura servitutium, census & solarii vectigalis: Cum rei propria nulla superforet servitus, exindeque vectigalis fundi qualitas esset immutata.* Thus he, whom see also, if you please, *De Domanio Gallico*, pag. 168. num. 2. Also pag. 284. num. 1. To whom add *Hotaman*, *De Feudis*, lib. 1. tit. 5. parag. 2. in fine. You see by this how the present case stands in some parts abroad. Here at home, as it seems by the very Customal of Kent, in two several cases therein specified, the descent of *Gavelkynd-land* is changeable, and the land becomes unpartible; first (namely) when by escheat, happening either by Death, or *Cessavit*; next, when, by the tenants voluntary surrender, it comes into his Lords hands, who holds by Fee of *Haubert*, or by *Grand Sergeanty*, both which (e) Mr. *Lambard* takes to be Knight-service. To which may be added two other cases, which occur in an ancient Kentish Eire, in the Exchequer, ann. 29. *Edw. 1.* where enquiry being made, and the question propounded to the Kentish men, how many ways *Gavelkynd-land* might be altered, and delivered from the ordinary and customary descent, answer was given by four, instancing in the two former, and to them adding those other two, namely, 1. *Per licentiam Regis*, (by the Kings licence) and, 2. *Per chartam Archiepiscopi*, (by the Archbishops (f) Charter.) Against this, and on the other side, (*inter alia*) may be opposed what is pleaded in the fore-remembered controversy between *Burga de Bendings*, and the Prior and Convent of *Christchurch Canterbury*, wherein the Prior, in barr. of *Burga's* claim to the moyety of his and the

(e) Peramb.
pag. 537.

(f) Of this
some exam-
ples before,
Propof. 2. to-
wards the end.

(g) See the
Append. Scri-
ptur. 5.

Monks manour in *Frankbath*, (g) pleads, *Quod Dominus Rex qui manerium illud dedit prædecessoribus suis, non tenuit illud nomine Gavelkynde*. Whence (admitting the plea for Law) naturally seemeth to result this double confectary. 1. That the King may hold land in *Gavelkynd*. 2. That the King holding land in *Gavelkynd*, in case he shall grant it away to any religious house, *in puram & perpetuam elemosinam*, (in *Frankalmoigne*) it remaineth notwithstanding partible, as before it came to the Crown, in their hands at least whom the religious men shall infeoffe with it. Much more doubtlesse might be said in the point, as well *pro* as *contra*: but I shall leave it to be further argued by Lawyers, adding onely in a word, what upon the whole matter I conceive of the case. I would ask then, if our Kentish *Gavelkynd*-land be partible *quatenus Gavelkynd*? I expect no other than an affirmative answer. If so, and admitting withall that such property in *Gavelkynd*-land owes it self to a custome accompanying land of that nature; yet I suppose it shall enjoy that property no longer than the land it self continues to be *Gavelkynd*, which some hold it is not, being once returned and come back again into the Lords hands, (the King especially being Lord) that granted it out in *Gavelkynd*; or of whom it formerly held in *Gavelkynd*:

(b) L. adigere.
parag quam-
vir. De jur.
patron. c. cum
cessante. extra.
de appellas. l.
tutores. parag
Curatores. de
admin. tut.

because then, as (b) *cessante causâ tollitur effectus*, so by reason of the unity of possession, the *Usufructus* (I cannot well English it) being consolidated and made one with the property, that property of being censual land, which *Gavelkynd* denotes, and which cannot be intended of any land holden in *Demefnie*, and not in service, ceaseth, and is quite extinguished; there being required

required to make the land *censual*, a *censual* Tenant, one that holdeth by *censual* services, such as here is none (especially in the Kings case) when once the land is come home again, reduced to its first principles, and re-united to (what, like *Fief*, is opposed to service-land) the Lords *In-land*, or *Demesne-land*, (as in the case of a common Lord) or to the Crown, (i) *à quo omnia fenum veniuntur & oriuntur*, the Fountain whence all Tenures are derived, (as in the Kings case) from whence by the letting it out in *Gavelkyne*, it was formerly severed. To this purpose see *Petri Gregorii Tholosani* (i) Bald. & alii citat. per Tholosan, Syntag. jur. univers. lib. 6. cap. 5. num. 11. *Syntag. Jur. univers. lib. 6. cap. 5. num. 11.* But of this also hitherto, for I hasten to an end.

PROPOSITION V.

Whether before the Statute of Wills (32. and 34. H. 8.) *Gavelkynd-land* in Kent were deviseable, or not.

Answer whereof, holding with those which resolve it in the negative, howbeit (for my part) not *studio partium*, but *veritatis amore*, I shall oppose to such as hold the contrary, what arguments are brought against them and their opinion, in a case of Mr. *Halls* of Kent, *verbatim*, as I find them published in print, which here follow, with their title:

Reasons

Reasons and authorities to prove that Gavelkind-lands in Kent, are not, nor were anciently devisable by Custome.

First it is a rule in Law, that an Assise of *Mordancester* doth not lie of lands which are devisable by Testament, &c. and this appears by divers books, as namely, 4. *Edw. 2. Mordanc.* 39. 22. *Affiz.* 78. and *Fitz. Nat. Brevium* 196. 1. But it appears by *Bracton*, fol. 276. b. that an Assise of *Mordancester* will lie of Gavelkind lands in *Kent*, and so it appears by divers ancient Records, *quod vide in Itinere Johannis de Berwick*, &c. Anno 21. *Edw. 1. Copia.* fol. 1, 7, 20, 24. & in *Itinere H. de Stanton*. Anno 6. *Edw. 2. Copia.* fol. 1, 8, 9, 10, 13. By which it appears plainly, that an Assise of *Mordancester* lies of Gavelkind lands in *Kent*.

But an Assise of *Mordancester* doth not lie of lands within the city of *Canterbury*, because lands are there devisable by Custome, as it appears in *dicto Itinere H. de Stanton*, fol. 3, 4, 6. And it is evident, that in the city of *Canterbury*, (which was anciently part of the county of *Kent*) there was a special custome used to devise lands, lying within the liberties of the city, and to prove their wils in the Court of *Burgmose* in the same city. But there needed no such Custome, if all the Gavelkind lands in *Kent* had been devisable, &c.

Also the most part of the ancient Wills of Gavelkind lands in *Kent*, before the Statute of Uses did mention Feoffees of the lands devised, &c. as appears by

by the Register-books of Wills, at Canterbury, and at Rochester, whereby it doth appear, that the Devisors were *Cesluy que uses*, and not owners of the land devised, and although some wills of land make no mention of Feoffees, yet there were Feoffees of the same land, as will appear by the deeds of Feoffment thereof, and twenty to one do mention Feoffees, &c.

Also Sir *John Fineux* chief Justice de R. B. Sir *Robert Read* chief Justice de C. B. and Sir *John Butler*, Justice, &c: devise their lands in Kent before the Statute of Uses, and make mention of Feoffees, &c. which had there been a Custome to devise, no question they had taken of it, &c.

Also many ancient deeds of Feoffment of lands in Kent refer to Wills, sc. *Dedi, concessi*, &c. *A. B. omnia terras & tenementa*, &c. *ad opus & usum perimplendi ultimam voluntatem meam*, &c.

Also there are wills to be found of lands in diverse other Counties of this Realm, whereby lands were devised before the Statute of Uses, and no mention made of any Feoffees, as appears in the Register-books of the Prerogative Court, and in diverse other places, and yet without doubt they had Feoffees seised to their uses, &c. or else they could not there devise the same.

Also the houses and lands in Cities and Burroughs, which were devisable by Custome, were reckoned *inter catalla sua*, but it were strange that all the Soke Lands in Kent (which are conceived to be *Gavelkind*) should be reckoned *inter catalla*, &c.

And in the Register, fol. 244. there are fourteen several Writs of *Ex gravi querela*, and none of them

‘make mention of any County, &c. nor of Gavelkind
 ‘but *secundum consuetudinem Civitatis*, or *secundum*
 ‘*consuetudinem Burghi*, &c. And if Gavelkind Lands
 ‘be deviseable by Custome, &c. the Devisee can have
 ‘no Writ of *Ex gravi querela*, because there is none be-
 ‘fore whom the Action or writ should be brought, &c.

‘Also Mr. Lambard in his *Perambulation*, writing of
 ‘the Customes of *Kent*, maketh no mention of any
 ‘Custome to devise lands: nor the Treatise called
 ‘*Consuetudines Cantia* in the old *Mag. Charta*, fol. 147.
 ‘which (without doubt) they would not have omit-
 ‘ted, if there had been any such Custome, &c.

‘Also between the Statutes of 27. H. 8. of Uses, and
 ‘the Statutes of 32. of H. 8. of Wills, there were very
 ‘few Wills made of lands, as appeareth by the Regi-
 ‘ster-books before mentioned, and the most of such
 ‘Wills as were then made (being but few in number)
 ‘do make mention of Feoffees.

‘Also the common practice ever since the Statutes
 ‘of Wills hath been such, that if a Will be made void
 ‘for a third part, by a Tenure in Capite of part of the
 ‘land &c. that third part shall descend to the Heir, and
 ‘the Devisee shall not have it, and this appears by
 ‘special Liveries in the Court of Wards proving the
 ‘same, and by diverse witnesses that can prove the
 ‘same to be so, &c.

‘And in *Sanders* case of *Maidstone*, in *Anno 9. Fa-*
 ‘*cohi Regis*, all the lands were devised by Will, and af-
 ‘ter the Will was avoided for a third part, by reason
 ‘of a Tenure in capite of a small part of the land, and
 ‘the third part of all the residue of the lands, being
 ‘Gavelkind, did escheat to the King for want of Heir,
 ‘which

which land is ever since enjoyed under the Kings title by escheat. And *John Wall* upon a trial recovered against *White* the Devisee.

Whereby it is evident that *Gavelkind* Lands in *Kent* were never deviseable by Custome, and so it was agreed *per curiam Pasch. 37. El. in C. B. in Hatton and Starbops case*, upon evidence to a Jury of *Kent*, & it was then said, that it had been so resolved before, and there it was said *per curiam* that *Fitz. Nat. Brev. 198. l.* is to be understood where there is a special custome, that the Land is deviseable, &c.

And he that shall conclude upon that place of *Fitz. Nat. Brev. 198. l.* that all *Gavelkind* Land is deviseable, &c. may as well conclude, that all Lands in every City and Burrough in *England* is deviseable, which is not so, as appeareth by *Mr. Littleton*, who saith that in some Burroughs by custome a man may devise his Lands, &c.

And if *Gavelkind* Lands were deviseable by custome, &c. Then a man may devise them by word without writing, as it is agreed in *34. H. 8. Dyer. 53.* for a man may devise his Goods and Chattels by a Will *Nuncupative*, so may he likewise devise his Lands deviseable by custome, because they were esteemed but *tanquam catalla*, &c. and it would be a mischievous thing, if all the *Gavelkind* in *Kent* should be deviseable by word onely.

To these arguments and objections against the custome, certain answers and exceptions by the learned Counsel of the adverse party have been framed and returned in behalf thereof, reducible to three heads: which (to avoid all just suspicion of partiality and

prejudice wherewith some zealous advocates and contenders for the custome have been, and may again be, ready to asperse me) I shall here subjoyn; together with such answers and arguments (by way of reply) as I have received from the learned Counsel of the other side, in further and fuller refutation of theirs who endeavour to uphold the custome.

*The learned Counsels arguments in behalf
of the Custome.*

‘**F**irst, they deny the old book of *4. Edw. 2. Fitzh. Mortdancester* 39. to be Law. But an Affise of *Mortdancester* lies of land deviseable, if it be true that his Ancestour died seized, unlesse it appears that the Defendaut claims by some other title. But if the Defendaut plead that the land is by custome deviseable, and was devised unto him, it is a good barr of the action.

‘Secondly, They rely much upon the book of *Fitzherb. Natura Brevium*, fol. 198. which sayes, that a Writ of *Ex gravi querela* lies where a man is seised of lands or tenements in any City or Burrough, or in *Gavelkynd*, which lands are deviseable by will time out of mind, &c. whence they inferr that all *Gavelkynd*-lands are deviseable by custome.

‘Thirdly, They cite the Treatise called *Consuetudines Cantie*, in the book called old *Magna Charta*, and *Lambards Perambulation of Kent*, fol. 198. that lands in *Gavelkynd* may be given or sold without the Lords licence, and they interpret the word *given*, to be by will; and the word *grant*, to be by deed.

The

The Reply to the fore-going Arguments, by such as stand in opposition to the Custome.

AS to the first Objection against the Argument taken from the Assise of *Mordancester*, they reply thus :

First, they maintain, that the Custome alone, without an actual Devise is pleadable in abatement to an Assise of *Mordancester*, as well as the Custome with an actual Devise is pleadable in barr : for which there is not only that book of 4, *Edw. 2.* but also *Bracton*, lib. 1. fol. 272. *Ubi non jacet Assisa mortis antecessoris*, among his pleas in abatement of the Writ, (having before treated of pleas in barr to it.) *Cadit Assisa* (sayes he) *propter consuetudinem loci, ut in Crussatibus, Burgis, &c.* and 22. *Assis. pl. 78.* where upon the like plea the Writ was abated : and *Fitzherb. Nat. Brev. fol. 196. l.* (whose authority they think strange to be denied in a matter of Law, wherein he was a Judge, and yet so strongly relied on in a matter of fact and custome, in a place whereto he was a stranger :) and so was it practised and allowed in *Itin. Fol. ban. de Stanton, 6. Edw. 2.*

And the reason given by the book, why such a custome is pleadable in abatement to this Writ, is because the suggestion of the Writ may be true, that the Ancestour died seised, &c. and yet the heir have no title where the lands are devisable. And it is the property of this Writ, that the dying seised must be traversed ; and though the Tenant plead the Feoffment of the Ancestour, or other matter in barr, (that

‘is not matter of *Estoppel* to the heir, as a Fine, Reco-
 ‘very, &c.) yet must he traverse the dying seised, and
 ‘the Jury shall be summoned and charged to inquire,
 ‘if the Ancestour *die quo obiit seifitus fuit*, &c. and so
 ‘are the books of 9. Affis. pl. 22. 27. Hen. 8. 12. Brooke
 ‘*Mordancesthor*. 1. Old Nat. Brev. fol. 117. and diverse
 ‘others. Nor is there any opinion to be found in any
 ‘book of Law against that book of *Fitzherb. Mord-*
 ‘*dancesthor*, 39. until the 15th of King Charles, *Lawn-*
 ‘*der* and *Brookes* case, *Crooke*, lib. 1. fol. 405. *obiter*, up-
 ‘on the trial of this custome.

2. ‘Admit that at this day the Law is held to be
 ‘otherwise, yet it appears by all the authorities a-
 ‘foresaid, that in those times the Law was taken
 ‘to be, that the *Mordancesthor* did not lie where
 ‘there was such a custome: but it was a good plea
 ‘in abatement of the writ. And yet Assises of
 ‘*Mordancesthor* were then frequently brought and
 ‘maintained of lands in *Kent*, as appears by *Bra-*
 ‘*don*, and the books above said.

3. ‘Whether the custome alone be pleadable in a-
 ‘batement; or the custome with an actual devise
 ‘be to be pleaded in barr, they say it cannot be
 ‘shewn (if it can they challenge them to do it, who
 ‘would maintain the custome) that it was ever
 ‘pleaded one way or other, either in abatement,
 ‘or in barr, to any one of all that multitude of As-
 ‘sises of *Mordancesthor* brought at large in that
 ‘Country, when in so small a City and County as
 ‘*Canterbury* (where indeed there is such a custom)
 ‘they shew it often pleaded to writs of *Mordance-*
 ‘*sthor* brought there before *Roger de Stanton* and
 ‘other Justices in Eyre. ‘Secondly,

Secondly, To the book of *Fitzherb. Nat. Brev. fol.*
 198. upon the writ of *Ex gravi querela* (from whence
 the ground of this question sprung) they answer, that
 the sence and meaning of that book (no lesse than
 the Grammar of it duly observed) is no more, then
 that the writ of *Ex gravi querela* lies there where lands
 in any City or Town, or in *Gavelkynd*, are devisable
 by custome. Not that all lands in Cities, and Bur-
 roughs, and in *Gavelkynd*, are devisable by custome.
 So that the mistake ariseth by making that a catego-
 rical, which is but an hypotheticalal proposition: and
 serves rather to ground an argument against the cu-
 stome. For if the writ of *Ex gravi querela* does lie
 there, where there is such a custome, then (*à contra-*
riū) it may well be argued, that where a writ does not
 lie, there is no such custome: and it cannot be said to
 lie there (for *Fitzherbert* speaks of places:) where it
 was never brought.

They say further, that this writ of *Ex gravi querela*
 is a formed writ in the Register, appointed by Law
 as the proper remedy of the Devisee, where such a
 custome is: and that therefore it hath been required
 by the Judges, as a necessary proof of such a custom,
 that it be shewen that this writ hath been used to be
 brought there, where such a custome is alleged to be,
 40. Assis. pl. 41. and the opinion of *Knivet*, 39. Assis.
Brooke, Devise 43. In like manner, as to prove a cu-
 stome of intailing Copy-hold-lands, it must be shewn
 that plaints in the nature of *Formedons* have used to
 be entred. (*Heydons* case in the third Report.) But
 they say that for proof of this custome in *Kent*, there
 is not onely (of 14. in the Register, which all con-
 clude,

' clude, *secundum consuetudinem Burgi, or Civitatis*)
 ' not one precedent of any such writ for *Kent*: but that
 ' it cannot be shewen that ever any writ of *Ex gravi*
 ' *querela* was brought for any lands in the county at
 ' large, out of some City or Town. And it is a questi-
 ' on to whom such writ at large shall be directed, there
 ' being no form at all in the Register of the direction
 ' of any such writ at large; the form there to a City or
 ' Burrough being either *Majori Civitatis, or Burgi, &c.*
 ' They say it could not be, but that question must
 ' have arisen, (if not of the custome) whether a will or
 ' no will: for the trial of which there was scarce any
 ' other course (at least, none more ready) before the
 ' course of Ejectments grew to be the practice, then
 ' either for the Devisee to bring this writ of *Ex gravi*
 ' *querela* against the heir being in possession, or for the
 ' heir being ousted by colour of a will to bring his
 ' *Mortdancestor*. And therefore they think it not cre-
 ' dible that (if such a custome were, and so extensive
 ' as to the whole county of *Kent*) there should be no
 ' Record, (if there be, they again challenge the other
 ' side to shew it;) whether any Devisee either brought
 ' this writ, or pleaded this custome, (and pleaded it
 ' must be, as themselves acknowledge, and is resolved
 ' in *Lannder and Brookes case*;) for any lands within
 ' the county of *Kent* out of some City or Burrough:
 ' when as they are confident to say, that there is not
 ' any custome used in *Kent*, and that extends through
 ' the whole county, but Records may be shewen where
 ' it hath at some time been judicially pleaded and al-
 ' lowed.

' They add, that Customes, being special Laws, are
 ' sued

‘suted to the place where they are used; and that this
 ‘is a custome very proper and sutable in Cities and
 ‘Burroughs, among Merchants and Tradesmen, that
 ‘they might dispoſe of their houses together with
 ‘their personal estates: and that the pleading of this
 ‘custome in all Writs and Records is, that they are *le-*
 ‘*gabilia, tanquam bona & catalla*. And therefore by
 ‘the books of 40. Affil. pl. 41. and *Cokes* 1. Instit. 110.
 ‘it is held that this custome cannot be alleaged in any
 ‘upland Town. Then how improper is it that all the
 ‘estates in so great a county should be of no other na-
 ‘ture (in this respect) than goods and chattels, and lia-
 ‘ble to be disposed and carried away by words catcht
 ‘from dying men? which (they say) may serve too
 ‘for an argument against the pretended benefit and uti-
 ‘lity of this custome; especially when the multitude
 ‘of controversies, arising upon wills, have made it a
 ‘question, whether it had not been better the Statutes,
 ‘of 32. and 34. Hen. 8. of wills, had never been made.

‘And therefore (they say) that in *Wylde’s* case, in the
 ‘8th Report, which was resolved by all the Judges of
 ‘England, it is said expressly (and no doubt upon good
 ‘consideration) that at the Common Law, lands were
 ‘not deviseable but by custome onely in Cities and
 ‘Burroughs, Houses and such small things. And in *Mat-*
 ‘*thew Mene’s* case, in the 9th Report, where the will
 ‘was of *Gavelkind* lands in *Kent*, and a house holden
 ‘in *Capite*, it is all along held, that the will there was
 ‘enabled by the Statute, and puts a case of lands in
 ‘*London* deviseable by custome, as a stronger case;
 ‘which certainly it were not, if lands in *Kent* were so
 ‘deviseable.

The third objection from the words (*doner en vender*) they say, deserves no answer more than this, that the same words are used, that the Infant may *doner* or *vender*, give or sell, his estate at the age of fifteen, and that no man will say, that he may at that age make a will.

Thus have you the learned Counsels arguments (faithfully exhibited) both for and against the custom of devising *Gavelkind-land* in Kent, before the Statutes of 32 and 34. *Hen.* 8. concerning the devising of lands by will. Treading (as I said) in the steps of those who oppose the custome, give me leave, by the way of Corollary, to add somewhat, haply not improper to be hinted and insisted on in this argument. Besides

(a) *Glanvil*, lib. 7. cap. 1. & 5. *Bracton*, fol. 12. b. fol. 49. 2. fol. 127. a. fol. 407. b. fol. 409. b. *Britton* with others cited by Dr. *Cowell* Instit. lib. 2. tit. 20. num. 7. *Feke* upon *Littleton*, fol. 111. b. *Littlwoods* Provincial. de Testam. c. Statutum, parag. testamentis, vers. legat possunt.

(b) *Bract* lib. 2. cap. 19. lib. 4. tract. 3. cap. 9. num. 5. *Cujas* de Feud. l. b. 1. tit. 2. & lib. 2. tit. 19. (c) Lib. 1. tit. 8. de success. feud. & *Pultrius* lib. 1. cap. 9. num. 70. (d) *Hotomax* upon that place of the Feuds. (e) *Lamb.* Peramb. pag. 520. & *Splin.* Glossar. verb. *Gavelkind*.

unanimous

unanimous vote, referring to the Germans, vouch for it that, amongst other of their Customes published by Tacitus: *Heredes successorisque sui cuique liberi, & nullum testamentum*: a passage, or authority, equally insisted on by the Feudists to warrant their (f) *Nulla ordinacione defuncti in feudo manente vel valente*, prohibiting the disposal of Fee by will, and of our municipal Lawyres and others, as for the like, to withall to illustrate the original of our (g) *Gavelkind*.

(f) Feud. lib. 2. tit. 8. de successu, feud & Hotoman. ibid.

(g) Lamb. & Spelm. ubi supra.

But that which in this case (as to matter of fact) very much, if not most of all, works with me, (what it may with others I know not) and induceth me to an utter dis-belief and rejection of this Custom, is certain passages & clauses in several wils extant & to be found in our Registers at Canterbury, and in that at Rochester, intervening and happening in the interim of those two Statutes; the one of *Uses*, made anno 27. the other, of *Wills*, inserted anno 32. Hen. 8. (a time most proper for the Custom, if any such in being, by its fruits, the immediate free devise of lands by will, at pleasure, without that mediate, collateral and by-way, that *persphrasis*, of Feoffments and their Uses, which now was out of doors; to assert and shew it self:) all which (in my opinion) do plainly tend to the dis-proof of this custome of devising lands in Kent by will, before that Statute of wills. As for example.

1. In the will of *Thomas Bourne* of *Tenterden*, dated 3. May 1538. in the Archdeacons Registry at *Canterbury*, lib. 21. quatern. 7. And where (saith he) there is an *AB* lately made so avoid uses of wills, yet my mind is that *Clement* my son shall have my house and shop in *Tenterden* with the appurtenances to him in fee. And

noq

T 2

that

that John Bourne my son shall have all my lands lying in the parish of Hawkberst to him and his heirs in fee. And I give to my said son John xl. s. upon condition that he will abide and stand to the dividing and order of my lands, as my mind is before expressed. And if he will not stand to, and abide the said order and division, but so shift his part throwly, then I will the said xl. s. shall remain and be had to Alice my wife. Also I give to Clement my son iij. l. upon condition that he do stand to and abide the division and order of my lands and demements, according as my mind is before expressed. And if the said Clement do refuse my said order and division of my lands, and shift his part throwly, then I will the said iij. l. shall remain and be had to Alice my wife, &c.

Argument.

Had there been a Custome for devising lands by will, what needed that notice to be taken here of the Act for avoiding uses of wills? And why is the Testator put to it thus, to work and wage his sons to consent to that partition and division of his lands, by a Legacie in money to be forfeited upon their refusal, and for choosing to shift or divide throughly, as a thing in their power by Law, which could not be, had there been any such Custome.

2. In *Thomas Sayer, alias Lamberts will of Fowerham*, dated in May 1538, in the same Registry and Book, quatern. 9. some lands are devised away from the two female Inheritrices, to be sold and a partition also made between them of other lands. Whereupon

upon a Legacie in money is given to the heirs at Law, to wage them to consent and condescend to that devise and division, in these words:

Item, I will and bequeath to Ilabel and Margaret my two daughters, to each of them 6. l. 13. s. 4. d. to be paid to them by Benet my wife in money, or money-worth, in four years next after my decease, upon condition that my said two daughters, their Heirs and their Assigns, to suffer this my present will and testament to take effect, according as I before have willed. And if my said two daughters, their Heirs and their Assigns do this refuse, that my said will can take none effect, according as I before have willed, then I will my said two daughters, nor their Assigns, shall take no benefit nor profit of none of my bequeaths to them before bequeathed, &c.

Argument.

The same *Quare* here as before, viz. What needed this conditional Legacie in money, had it not been free to them and in their power and choice, whether his will, (for the sale of some land, and for the division of other) should take effect, or not?

3. In *John Crommers* will of *Fogylston* Esquire, dated in February 1538. in the same Registry, book, and quatern, this clause to our purpose is remarkable.

Item I will that each of my three daughters, Benet, Elizabeth and Grace, have 13. l. 6. s. 8. d. of such debts as their husbands do owe me: so that their husbands be content that such lands as I have purchased, go according to my devise and will, or else not, &c.

Argument.

Argument.

The like *Quare* here as before. Where also notes that although he mention a devise of lands by will; yet no such will is either proved or registred, because (probably) null and void in Law. The like whereof may be supposed of *Sparcklins* will of *Thames*, dated in March 1539. in the same book and Registry, quatern 14. where his mansion place at *Bronston* is said to be bequeathed to his son *John*: whereas no such thing appeareth by the approved will; nor is any land at all devised by it. The like may be said of *Cacherells* will of *Norborne*, dated anno 1537. in the same Registry and book, quatern. 8. where some Legacies in money are charged upon a house there said to be given to the party charged and his wife, whereas no such gift appeareth by the will.

4. In *Sarlys* will, dated anno 30. *Hen. 8.* in the same Registry and book, quatern. 11. where he maketh mention of his three daughters, we have this clause?

Item, I will that he (my brother) shall have my part of my house at Wy, called Jancocks, during his life, if that may be suffered by the Law, &c.

5. In the will of *William Byx* of *Linsled*, dated 1538. in the same Registry, lib. 22. quatern. 1. occurs this passage:

I will and bequeath all the profits, commodities, fermes, remis, of all my lands whatsoever, &c. unto my brother germane, Laurence Byx, unto the times that my sons, Laurence and Nicholas come to the age of 22. years, &c. Also to my daughters marriage 10. l. to be raised out of those

those profits, &c. and paid by my brother Laurence. Provided alway, if the Law will not suffer nor admit my brother Laurence to enjoy and take up the fermes, &c. of my lands, then I will that each of my said sons, &c. shall pay the said 10. l. unto my said daughters marriage, &c.

6. Thomas Hunt of Pluckly in his will, dated in the year (no moneth) 1540. (probably some time before the Statute of Wills that year made) in the same Registry, book and quatern. gives to his wife the issues of his lands for life, and after her death the lands themselves to his son John, charged with some Legacies in money to his younger brother Anthony and his children: but with this Proviso:

If thu my will (saith he) stand not good and effectuell in the Law, then I will that my said messuage and premises after the death of my said wife shall remaine to my said two sons J. and A. and to their heirs for ever, &c.

7. The like clause to this occurs in the will of John Hubberd of Westerham, dated the 23th of July 1537. in the Bishop of Rochesters Registry: viz.

Also if it do please God to visit my wife and all my children with death, then I will that Richard Hubbard, the son of William Hubbard of Lynsfield shall have my house and all my lands if that the Law will suffer it: paying therefore to every one of my sisters, Agnes, Katherine and Margaret, three pounds six shillings and eight pence to be paid within the space of two years next after my decease.

8. Nor is this passage lesse pregnant and pertinent to our purpose, taken from the will of John Stace of Leigh, dated the 18th of March 1538. in the same Registry.

And also I will that if the Kings lait Act in Parliam-

ment will not stand with my wife to enjoy the one half of my lands, I will then that mine Executors shall pay yearly to Agnes my wife xl. s. during the term of her life, and that to be paid quarterly at the four usual terms by equal portions, &c.

Argument.

In these five last wills mentioned (*Sarlys, Byx, Hunt, Hubbard and Staces*) what means that doubt and question in the Testators, whether their devises (of houses and lands) were good, or would hold and stand firm in Law, had there been such a Custome, and had not the Law been clear otherwise in this case, as well in *Kent* as elsewhere?

I observe also, that in the interim of 27. and 32. *H. 8.* some few (and indeed but very few) wills there are in the Registers at *Canterbury*, wherein lands are devised: some with Feoffment, and some without, at least without mention made of any. As for the former, those with Feoffment, I find the most of them dated, though in or after the year 27. yet before the sixth of May 28. year of that King, until when the A & was not to come in force. Besides, happily the Feoffment was made before the Statute, and so could not be revoked (as I conceive) without the Feoffees consent. As for the rest (those without mention of Feoffees) some of them were of our City (*Canterbury*) or the like places, where by particular Custome they might devise. Others (happily) had Feoffments, although not mentioned. If not, they were no other (I conceive) than wills, *de facto*, or *de bene esse*, made: nor did or could otherwise,

or further operate, inure, or take effect than the interested or concerned parties should give way: with whom in those elder times (times of more and greater regard and reverence to the will of the dead than the present) the dying parent, or kinsmans mind declared in his will, bare so great a sway, and did so much prevail, as to perswade with them to renounce an advantage to themselves, for the fulfilling of the deceaseds solemne and declared mind. Besides, it follows nor, that because such wills and devises are found, therefore they passed and were allowed of as good and effectual: the contrary whereof is more than probable by the *ifs* and *conditions* found in other wills of those times, arguing plainly the Testators distrust and doubt of the validity, and consequently of the successe and effect of his devise, whereof examples are laid down before.

Before I close and wind up all, I have onely this to add, by way of offer, from the party opponent to this Custome, and his Councel, (which, as a matter much considerable, I may not pretermitt:) that, whereas that abundance of wills wherein lands are devised without mention of Feoffees, found and produced from the Registries both of *Canterbury* and *Rochester*, is much insisted on in behalf of the Custome: it from the Registries of any other Diocese out of *Kent*, (where such devises never did, nor could obtain, until the Statute of Wills) of equal circuit and extent to either of these, the very same thing may not as truly be observed, and a proportionable number and quantity of such kind of wills, (wills of lands devised without mention of Feoffees)

fers) cannot be produced, and consequently the argument and inference thence drawn (for the Customs) eluded and avoided, they will sit down convinced, and with their adversaries subscribe unto that argument. An offer (this) in my judgement so fair, ingenuous and plausible, as not to be rejected of any, but such as out of a cavilling spirit, are resolved to turn the deaf ear upon all fair and equal proposals: that I say not, such as, for maintenance sake, make it their study, *quacunq[ue] modo*, to maintain their spurious interest. But that I may not seem to be (what indeed I am far from being, any otherwise than in truths behalf), a partisan in this business, I shall forbear all further censure, and if I may but have the Readers leave to make my Epilogue, I shall, with thanks to him for that, and the favour of all his other patience, quit the stage of my discourse on this whole argument, and make my *Exit*.

Peroration.

Many other things offer themselves to his discourse, that would treat of *Gavelkind* to the full; but they are (I take it) mostly points of Common Law, which because they are not only out of my profession, but besides my intension too, which was to handle it chiefly in the historical part, and that no further than might conduce to the discovery of the *Primordia*, or beginnings of it, I will not wade or engage any further in the argument, lest I be justly censured of a mind to thrust my sickle into another mans harvest: only (so a close) craving leave to supply the common Kentish Customal, at the end of Mr. Lambards Perambulation, with one clause, which, according to an ancient copy registred in a quondam book of St. *Augustines* Abbey

at

A clause wanting in the printed Kentish Customal supplied,

at Canterbury, now remaining with my very noble
and learned friend Sir Roger Twysden, is to come in at
pag. 574. lin. 2. after these words: *Que de lay est tenu
sans men. viz.* (as that old copy goes on these;) *E si
homo ou femme seit felon de fel m fines q' il sey mesmes
de gre se oye, le Roy aura les chartes tuts & nient l'an
ne le waist, mes le heir seit sautoit enherie sans contredit,
kar tout seit il feloun de sey mesmes, il neyt my attein de
felonye. Et clayment auxi, &c.* as it follows in that
printed Custumal. Which clause, as I conceive, may
be thus Englished: *And if a man or woman shall be a
Felon of him or her self, who shall kill him or her self of
his or her own accord, the King shall have all the Chas-
tels, and not the year and the daye, but the Heir shall
immediately inherit with the same: for albeit he
or she be a Felon of him or her self, he or she is not attain-
ted of Felony.*

Now craving pardon for what I have taken
to deliver my sence, and for my prolixity, on sever-
rall occasions here emergent, I will here cut the thred
of this Discourse, wishing that as I have not spared
freely to speak my mind, so that every man that plea-
seth, should assume the like liberty, not suspecting me
so opinionate of mine own vote, as to wish, much lesse
to beg, least of all to importune any unwilling minds
concurrence, though haply unprovided of a better of
his own, disclaiming that magisterial boldnesse of
him arrogated, that said once upon a like occasion:

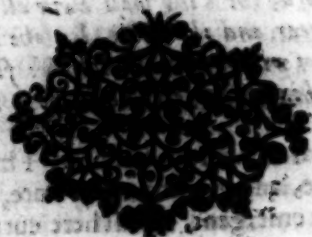
*— si quid novis rectius istis
Candidus imperti, si non, his uere mecum.*

172. *Gewelkynd-land, whether, &c.*

And (to wind up all) with every man, in what he
stands in doubt of, to be his own Oedipus.

*Quid. de pont.
lib. 3. El. 9.*

*Da veniam scriptis: quorum non gloria nobis
Causa; sed utilitas, officiumque fuit.*



Codex imp. 8. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.



AN APPENDIX

OF

Such Muniments (viz. Charters, and other Escripts) as are quoted in the precedent Discourse, with reference to this place for transcription.

Gharta pervetusta de terrâ ad Censum concessâ. Vide pag. 56.



Anulfus Prior, & tota Congregatio Ecclesiæ Christi, omnibus fidelibus & amicis suis salutem.

Sciatis nos, consentiente Archiepiscopo (a) Anselmo, concessisse Calvello & heredibus suis extra civitatem circa castellum, novem partes terræ, inter terram arabilem & prata, eâ conventionem ut ipse Calvellus & heredes sui singulis annis dent

Scriptura r.

(a) This (it seems) was before he granted them liberam dispositionem terrarum suarum, whet- of in Eadmer. Hist. Novor. pag. 108.

Z 3

Celarario

2. Forista.
Gurz.

*Calvario liij. sol. pro omni re, prater tres
forisfacturas, id est, homicidium, & furtum,
si ipse Calvellus vel haredes sui fecerint,
& prater si verecundinum ipse sive heredes
sui fecerint monachis Ecclesie vel servien-
tibus eorum. Horum vero denarior. una
medietas dabitur in media Quadragesima, &
altero in festo S. Michaelis. Calvello autem
mortuo, pro redemptione quam heredes fa-
cere solent, heredes sui xx. sol. dabunt, &
Censum quem pater prius dederat, ipse de-
inceps similiter dabunt. Testes horum sunt
Folbertus de Cill, Will. Folet, Rogerius
filius Herengodi, Robertus de Mala villa.*

Redemptio.

[Note that this Charter hath a seal appendant on a le-
bell proceeding from the side-margin, round, and
about the bignesse of a five shillings peece of silver,
the wax yellow, stamped, but on the one side with
the form of a Church, much like that in the old seal
of St. Augustines, in Sir Henry Spelmans Councells,
pag. 125. The inscription in the ring of it this:

† SIGILLVM ECLLESIAE CRISTLE

Charta

Charta Prioris consimilis.

Wibertus Prior & Conventus Ecclesie Christi Cantuar. omnibus fidelibus suis, tam presentibus quam futuris Salutem. Sciatis nos concessisse Goldwardo filio Feringi terram quæ fuit Walteri de Sartrino ser-
 uiti nostri, Mariæ uxoris sue, & item terram quæ fuit Mariæ filie Richardi aurifabri, simul cum propria terra sua in qua Feringus pater suus manebat, pro iij. s. & iij. d. & ob. quas nobis inde annuatim reddet ad duos terminos, ij. scilicet solidi, & iij. denar. & ob. ad med. Quadrages. & ij. s. ad festum S. Michaelis. Tenebit itaque prædictus Goldwardus de nobis has terras bene & in pace & honorifice jure hereditario per superscriptum censum, & licet ei de ipsis tanquam de propriis libere facere quod voluerit, salvo jure & redditu nostro. Ita tamen quod si eum alicui dare voluerit vel vendere, nobis prius hoc indicabit, & nos ad emendum eas (b) proximiores esse debemus. Terra illa jacet juxta mu-

Scriptura 1.
Vide pag. 50.

(b) Simile
habetur in L.
Bis ger. apud
Scot. c. 100.

rum Eleëmofynaria noſtra. Teſtibus Bartholomæo Dapiſero, Will^{mo} Camerario, Geldewino & Johanne, Cocis; & multis aliis.

Alia Charta de terrâ ad Gablum conceſſâ.

Scriptura 3.
Vide pag. 50.

Robertus Monachus Eccleſiæ S. Auguſtini, Cuſtos & Procurator Hoſpitalis beati Laurentii, Omnibus Chriſti fidelibus Salutem. Sciatis me conceſſiſſe Hamoni textori & heredibus ſuis duas acras terræ contra Sanctum Sepulchrum, pro duob. ſolidis de Gablo, ſingulis annis, jure hereditario tenendas. Medietatem autem dabit in media Quadrageſimâ, & medietatem alteram in ad Vincula S. Petri, & tres gallinæ in vigilia Natalis Domini. Valeat. Teſtibus Alurico præſbytero, Lidulfo, Will^{mo} textore, & fratribus illius loci.

Charta de terrâ ad Gavelikendam conceſſâ.

Scriptura 4.
Vide pag. 38.
& 55.

Sciunt præſentes et futuri quod ego R.
Dei

Det gratia S. Augustini Cantuar. et ejus-
dem loci Conventus dedimus Jordano de
Scetres et heredibus suis ad Gavelikendam, Gavelikend.
xl. acras de marisco nostro pertinente ad ma-
nerium nostrum de Cisselet, cum pertinentiis
suis, Tenend. de nobis jura hereditario in
perpetuum, Reddendo inde nobis annuatim
vij. solid. et vij. denarios sterlingorum ad
Curiam de Cisselet, in duobus terminis anni,
in Nativitate Domini iij. s. et ix. d. et in
Nativitate Johan. Baptiste iij. s. et ix. d.
Et pro hac concessione dedit nobis predictus
Jordanus C. s. sterling. de Gersume. Ut
igitur ista donatio stabilis et firma perma-
neat sigilli nostri munimine eam roboravi-
mus. Hiis testibus Henrico de Cobbeham,
Galfrido de Stokes, Stephano de Marisco,
Philippo de Furport, Codefrido del Pac,
Bricio del Pac, Waltero filio Roberti, Gi-
leberto fratre Abbatis, Will^{mo} Pincerna,
Wido Janitore, W. Coco, Alex. Hostiario,
et multis aliis.

Apographum processus litis inter Burgam
de Bending, & Priorem & Conventum
Ecclesie Cantuar.

Scriptura 5.
Vide pag. 51.

De toto manerio de Welles coram W. de
Ebor, R. de Turkeby, G. de Passon, &
sociis suis itinerantibus apud Cantuar.
3. Id. Junij, Anno Domini 1241. R. H.
filii R. Johannis 25.

Francus Ban-
cus

Burga quæ fuit uxor Petri de Bending
petit versus Priorem S. Trinitatis Cantuar.
monasterium manerii de Welles sicut Fran-
cum Bancum suum, ad faciendum firmam
xviij. denarum, et nunc prædictus Petrus
quondam vir suus tam dotavit, &c. Et
Prior, scilicet Rogerus de Lit. venit et dicit
quod habet manerium illud ex dono præde-
cessorum Domini Regis, qui illud mane-
rium aliquando tenebant. Et quod illud
manerium dederunt Deo et ecclesie S. Tri-
nitatis adeo liberè sicut manerium illud te-
nebant in puram ac perpetuam eleemosy-
nam: ita quod illud manerium nunquam
possea

postea partitum fuit, nec est partibile. Et dicit quod Dominus Rex qui manerium illud dedit prædecessoribus suis, non tenuit illud nomine Gavelkind. Et contra Burga ^{Gavelkind} dicit, quod prædictum manerium est Gavelkind, et partibile, ita quod quidam Robertus de Caloignes, Dominus de Sutton, qui duxerat in uxorem Matildam de Willels, cuius hereditas illud manerium fuit post mortem illius Matildis, habuit nomine Franci Banci, medietatem illius manerii, et Petrus vir illius Burgæ habuit medietatem illam ex dono Hervei Bellet consanguinei ipsius Burgæ, postquam idem Petrus desponsavit ipsam Burgam, qui quidem Hervetus redemit medietatem illam per denarios suos de prædicto Roberto, ad opus ipsius Petri ac Burgæ. Et quod ita sit offert Domino Regi xx. s. per sic quod inquiratur per patriam. Et Prior dicit quod prædictum manerium non est Gavelkind, neque partibile, nec prædictus Robertus unquam habuit ibidem medietatem prædicti manerii ut de Franco Banco suo. Et quod ita sit ponit se super patriam. Et ideo fuit inde, &c. In-

Iuratores,

natores videlicet R. de Strivann, I. de Elling, S. de Grete, G. de Dene, W. de Darmbenn, A. Perot, E. de Boston, S. de Hauke, B. de Badesmere, R. de Chilham, et Alanus de Legges,

Vered. Sum,

dicunt super sacramentum suum, quod prædictum manerium fuit quondam manerium Domini Regis. Et quod datum fuit Deo et Ecclesie S. Trinitatis in liberam, puram et perpetuam eleemosynam. Ita quod manerium illud nunquam fuit Gavelikende, nec partitum, nec est partibile, nec prædictus Robertus nunquam habuit medietatem prædicti manerii nomine Franci Banci. Sed dicunt quod post mortem prædictæ Matildis, tenuit prædictus Robertus totum manerium illud simul cum custodia prædicti Petri. Ita quod prædictus Herveus dedit quandam summam pecunie prædicto Roberto pro custodia illâ. Et ideo consideratum est, &c. quod Prior teneat, &c. & sine die, & prædicta Burga in misericordia.

Iudicium,

Carta de terrâ ad Gavelikende concessâ.

Scriptura 6.
Vide pag. 38.
in 55.

Alanus Prior et Conventus ecclesie Christi
Cantuar.

Cantuar. Omnibus Christi fidelibus ad quos
litera ista pervenerint Salutem. Volumus
ad omnium noticiam pervenire quod nos
concessimus & assignavimus Theb. de
Einesford & heredibus suis quater viginti
acras de Dominio nostro in Northholt, te-
nendas de nobis ad Gavelikende. Reddendo Gavelikende.
inde nobis xx. s. singulis annis, x. in med.
Quadrag. & x. ad festum S. Michaelis.
Hanc tamen hac conditione ei tenebimus si
mansionem & domos suas super predictam
terram fecerit. Debet insuper tam ipse
quam heredes sui sequi curiam nostram de
Dipinton sicut ceteri homines de eadem
villa.

Charta pirori consimilis.

Alanus Prior et Conventus ecclesie Christi Scriptura 7.
Vide pag. 38.
& 55.
Cantuar. Omnibus Christi fidelibus Salu-
tem. Solatis quod nos concessimus & assig-
navimus Stephano de Renardintone C. acras
de marisco nostro inter wallas Monachorum
Pontis Roberti, et Oxeniam, ita quod de-
bet habere illas C. acras post alias C. acras

2
quas in cedent. manifestissime Stephano
militi de S. Martino, usque ad C. illas acras
quas dimisit Solomoni de Gellings. Con-
cassimus. Tunc hos predictos C. etiam eidem
Stephano de Beuardintone. & heredibus suis

Quelici. endc. ad G. ad G. Reddenda inde nobis duas
marcas argenti singulis annis, ad duos, viz.
terminos, infra octavam Nativitatis S. Jo-
hannis Baptiste unam marcā, infra octa-
vam S. Michaelis alteram marcā, pro omni
servitio, nisi quod debet wallare secundum
quantitatem illius terre intus & extra, tam
contra falsam quam contra frescam, sicut
ceteri, et Curiam nostram sequi. Jura etiam
Cantuarien. ecclesie, et in hoc et in aliis,
quantum ipse potest cum ratione tueri et de-
fendere. Hæc autem omnia suavitudo cor-
poraliter in capitulo nostro prestito juravit
se fideliter observaturum. Hiis testibus Co-
desfrido coco, Stephano portario, Bartholo-
mæo seneschallo, Willmo de Capis, Roberto
Porter, et multis aliis.

Alia

Alia Charta confirmans.

Omnibus ad quos presens charta perve-
nerit. Goufridus Prior & Conventus eccle-
sia Christi Cantuar. Salutem. Noverit uni-
versitas vestra nos concessisse Joni & here-
dibus suis Berobariam nostram ducentarum
ovium, scilicet medietatem de Osmundesepe in
terra & marisco cum una salina, Tenend.
de nobis successivè ad Gabelykende ita plenè
& integre sicut eam unquam Rogerus de
Osmundesepe tenuit. Reddendo inde nobis
annuatim lvijs. s. de redditu ad duos termi-
nos, scilicet ad festum S. Johannis Baptiste
xxviij. s. & ad festum S. Michaelis simi-
liter viginti octo. Post mortem vero predi-
ci Jonis dabunt nobis heredes sui successivè
de Rokewio lvijs. s. Dabunt etiam idem J. &
heredes sui post ipsam nobis annuatim ad
Natale Domini unum Matblardum, et unam
Annatam, & quatuor cercellas, & ad Pa-
scha unum caseum, & unum agnum de Pre-
sent. Super hoc sciendum, quod predictus
Johannes datus sit Curiam nostram de Leydoun
sequentur

Scripura 8.
Vide pag. 38.
& 55.

Gavelykende.

Relerium.

Pr. sent.

sequuntur, & in auxiliis dandis & Scottis
sicut alii Tenentes nostri scabunt. Et
inde ipse & heredes sui successore saluos
plegios inuenient de redditu terminis statu-
ti reddendo, & de Berchunne institutione
integre & fideliter conseruanda.

Alia consimilis Charta Hospitali data

Scriptura 9
Vide pag 38.
& 55.

Gavelekende

Sciunt presentes & futuri, quod ego
Radulfus Ebone tradidi & concessi Deo &
fratribus Hospitalis S. Laurentii iuxta
Cantuariam, in orientali parte, septem
acras terre mee tenendas in Gavelekende de
me & heredibus meis libere & quiete.
Reddendo inde annuatim mihi vel heredi-
bus meis xliij. denarios pro omni seruitio,
& omni exactione in duobus terminis, scil.
in med. Quadragesima xxj. denar. & in
festo S. Michaelis xxj. denar. Prædicta au-
tem terra nominata est Prestleshege, quæ ad-
iacet terre Helix de Blen. Pro hac donati-
one & confirmatione dederunt mihi prædi-
cti fratres & heredibus meis quinque mar-
cas sterlingorum. His testibus Johanne cle-

oico,

rico, filio Henrici Sacerdotis, &c. & pluribus de Halymot.

Inquisitio de terris & tenementis quæ Isabella de Monte alto tenuit de Priore ecclesiæ Christi Cantuariæ.

Inquisitio facta apud Pokynden coram Eschaetore Domini Regis die Mercurii prox. ante festum S. Catherinæ virginis, anno R. R. Edwardi secundo, de terris & tenementis quæ Isabella de monte alto tenuit de Priore Ecclesiæ Christi Cantuariæ, & per quod servitiū, per sacramentū Will^mi de Cokeler, &c. qui dicūt per sacramentū suū, quod prædicta Isabella tenuit in Gabelikende die quo obiit de prædicto Priore unū messuagiū, xliij. acras terræ cum pertinentiis in Pokinden, per servitium decem solid. undecim denarior. per annum, & per servitium arandi unam acram terræ ad seminandum frumentum, quod valet xij. d. per annum. Et per servitium metendi prædictam acram & cariandi in Grangiam Prioris apud Dpinton

Scriptura 10.
Vide pag 18.

Gaveikende.

blada ejusdem acris, quod servitium exten-
dit per annum ad xij. d. Et per servitium
arandi dimidiam acram terræ ad seminan-
dum frumentum, et dimidiam acram terræ
ad seminandum ordeum, et utramque dimi-
diam acram metendi et ligandi, quod qui-
dem servitium extendit per annum ad ij. s.
Et per servitium solvendi unam denar.
et obulum ad falcandum pratum Domini
Prioris, & per servitium cariandi unam ca-
rectatam & dimidiam feni in Grangiam
Prioris apud Orpinton, & valet per annum
iij. denar. Et per per servitium faciendi
duo averagia de Orpinton usque Wepham per
annum, & valet opus viij. denar. Et per
servitium claudendi tres petidatos circa
Gardinum Prioris prædicti apud Orpinton,
& valet opus ij. d. per annum. Et per ser-
vitium duarum gallinarum & xl. ovorum,
et valet per annum vj. d. pretium gallinæ
ij. d. Et per servitium faciendi sectam ad
curiam prædicti Prioris de Orpinton. de tri-
bus septimanis in tres septimanas. Et dicunt
quod prædicta Isabella obiit per tres annos
elapsos,

elapſos, et quod preragia à tempore mortis
prædictæ Iſabellæ uſque in hodiernum diem
ſunt l. s. j. d. ob.

Summa totius per annum — xvj. s. — vij. d. — ob.

Unde de redditu aſſiſ. — x. s. — xj. d. —

De Conſuetudinibus — v. s. — ix. — ob.

Servitia Tenentium de Rokinge ad reddi-
tum poſita.

Memorand. quod in feſto S. Michaelis, Scriptura 17.
Vide pag 60.
anno Dⁿⁱ Mccclxxxix. regni verò Regis Ed-
wardi xvij. Prior et Conventus eccleſiæ
Chriſti Cantuar. relaxaverunt Tenentibus
ſuis de Rokinge, viz. falcationem, levatio-
nem, cariagium, et taſſationem prati. Item
cariagium, impletionem & ſparſionem ſimo-
rum, facturam cratis, & Burghyard. Item Burghyard.
averagia apud Berſebam. Item fotaveragia.
Item meſſionem & herciaturam & collectio-
nem ſtipularum. Item cooperturam grangia-
rum, & conſionem ovium. Et pro iſta rela-
xatione, prædicti Tenentes ſolvent annuatim
ad manerium prædict. in feſto omnium San-
ctorum, & ad Purificationem beatæ Mariæ
Bb 2 redditus

redditus subscriptos pro equali portione.
 viz. Robertus le Frode de xij. acris &
 dimid. iiij. s. ij. d. ob. Timberdanzland pro
 viginti sex acris iiij. s. ij. d. ob. Terra
 Heymund pro novem acris iiij. s. ij. d. Terra
 Juliani pro viginti acris iiij. s. j. d. ob.
 Stameresland pro undecim acris ij. s. viij. d.
 Terra Smalspon pro tresdecim acris ij. s.
 iiij. d. Terra le Bred pro octo acris & di-
 mid. xvj. d. &c.

Relaxatio servitiorum & consuetudinum
 Tenentium de Bergham, pro annuo red-
 ditu solvendo.

Scriptura 11.
 Vide pag 67.

Universis pateat per presentes quod in
 festo Nativitatis Domini, Anno ejusdem
 Mcccvj. Regni vero Regis Edwardi filii
 Regis Henrici xxxv. Henricus Prior et Ca-
 pitulum ecclesie Christi Cantuar. remis-
 erunt et relaxaverunt hominibus et tenenti-
 bus suis de Bergham quasdam consuetudines
 et servitia pro annuo redditu quinquaginta
 septem solidorum trium denariorum et unius oboli
 eisdem Priori et Capitulo in predicto ma-
 nerio

nerio suo de Wepham in festo Apostolorum
 Petri et Pauli annuatim solvend. in formâ
 subscriptâ, viz. Tenentes de Gavellond de Gavellond.
 octodecim Jugis, pro cariagio triginta et sex
 careât. feni de prato de Hedhamme apud
 Clyde usque Wepham, quindecim solidos,
 viz. pro qualibet careât. quinque denarios.
 Et unum dimidium jugum est in Dominico.
 Item pro averagiis tresdecim solid. & qua-
 tuor denar. Item pro clausura circa blada
 duos solidos, undecim denar. & obulum.
 Item pro clausura circa Curiam quæ dicitur
 Burghyard, viginti duos denar. obulum Burghyard.
 & quadr. Item Tenentes de sex Jugis &
 dimid. de Inland pro trituratione & ven- Inland.
 tilatione triginta & quinque quarteriorum
 frumenti, novem solid. quinquē denar. obo-
 lum & quadr. viz. pro trituratione cujus-
 libet summæ tres denar. & pro ventilatione
 unum quadr. Item pro trituratione & ven-
 tilatione septemdecim grossarum summarum
 et dimid avenæ, tres solid. tres denar. &
 unum quadr. viz. pro trituratione cujusli-
 bet summæ duos denar. et pro ventilatione
 unum quadr. Item pro opere sarclandi

(a) f. *clij*,
vel *claiis*.
Vid. Spelm.
Glossar. in
voce.
Worderinde,

Swinhey.

ododecim denar. Item pro opere tassandi in
autumpno tresdecim denar. Item pro finis
spargendis sex denar. et obolum. Item pro
xviij. (a) Cladibus faciendis ad Ovile sex
denar. Item pro cibo Prioris querend. et pro
servitio quod dicitur *Worderinde*, et pro po-
mis frangendis duodecim denar. Item pro
clausura circa blada, quæ dicitur *Swinhey*,
duos solidos, decem denar. et quadr. Item
pro clausura xvj. perticarum et quinque pe-
dum muri infra Curiam ab ostio Aula ver-
sus Portam Curie xvj. denar. et obol. Item
pro grangia cooperiendâ duos solid. et sex
denar. In quorum omnium testimonium, si-
gillum commune prædictorum Prioris et Ca-
pituli, et sigilla Walteri de Northwode, Jo-
hannis de Hebergh, Johannis de Walisfeld, Hen-
rici de Hildenacre, Petri de Hildenacre, et Jo-
hannis de Prestwode, pro se et omnibus aliis
Tenentibus de Cabellond, ad requisitionem
ipsorum: et Johannis de Pettesfeld, Johan-
nis de la Dene Capellani, Henrici de Lomere,
Alfredi de Northwode, Henrici de Northwode,
et Walteri Ive, pro se et omnibus aliis Te-
nentibus de Inland, ad requisitionem eorun-
dem

Appendix.

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dem, huic scripto circographato alternatim sunt appensa. Acta sunt hæc anno supradicto.

Breve Regis (*W^m jⁿⁱ*) pro terris monasterii S. Augustini Cant. alienatis recuperandis.

Will^{mus} Dei gratiâ Rex Angliæ, Lanfranco Archiepisco Cantuar. &c. Salutem. Mando & precipio ut faciatis S. Augustinum & Abbatem Scotlandum reseisire burgum de Fordwich, quem tenet Haymo vicecomes, omnesque alias terras quas Abbas Egelsinus fugitivus, mentis lenitate, vel timore, vel cupiditate alicui dedit vel habere concessit. Et si aliquis, &c.

Scriptura 13.
Vide pag. 68.

Charta W. Regis jⁿⁱ de restitutione ablatorum in Episcopatibus & Abbatibus totius Angliæ.

W. Dei gratiâ Rex Anglorum, L. Archiepiscopo Cantuar. & G. Episcopo Constantiarum, & R. Comiti de Ou, & R. filio

Scriptura 14.
Vide pag. 69.

dio Comitibus Gil. & H. de monte forti, suis-
 que aliis proceribus regni Angliæ, Salutem.
 Summonete Vicecomites meos ex meo præ-
 cepto, & ex parte mea eis dicite, ut reddant
 Episcopatibus meis, & Abbatibus totum Do-
 minium, omnesque dominicas terras quas de
 Dominio Episcopatum meorum & Abba-
 tiarum, Episcopi mei & Abbates eis vel
 lenitate, vel timore, vel cupiditate dederunt,
 vel habere consenserunt, vel ipsi violentiâ
 suâ inde abstraxerunt, et quod hæcenus in-
 justè possederunt de Dominio ecclesiârum me-
 arum. Et nisi reddiderint, sicut eos ex parte
 mea summonebitis, vos ipsos velint nolint
 constringite reddere. Quod si quilibet alius,
 vel aliquis vestrum quibus hanc justitiam
 imposui, ejusdem querelæ fuerit, reddat si-
 militer quod de Dominio Episcopatum vel
 Abbatiarum mearum habuit, ne propter il-
 lud quod inde aliquis vestrum habebit minus
 exerceat super meos Vicecomites vel alios
 quicunque teneant dominium ecclesiârum
 (b) f. quâ, mearum (b) quod præcipio.

Breve Regis in subsidium Villanorum Ab-
batis S. Augustini Cantuar. se gravari
querentium in taxatione 10^{mz} & 15^{mz}.

Edwardus Dei gratiâ Rex Angliæ, Domi-
nus Hiberniæ, & Dux Aquitanix, Taxato-
ribus Decimæ & Quintadecimæ in Comi-
tatu Cantix, Salutem. Ex parte dilecti no-
bis in Christo Abbatis S. Augustini Cantuar.
nobis est ostensum, quod vos omnia bona &
catalla Villanorum ipsius Abbatis in Comi-
tatu prædicto, non deductis redditibus, ser-
vitiis & custumis quæ iidem Villani præ-
fato Abbati reddunt & solvunt annuatim,
quæ quidem redditus, servitia & custumæ
inter temporalia ipsius Abbatis spirituali-
bus suis annexa ad decimam sunt taxata, et
inde idem Abbas decimam solvit, taxastis, et
decimam & quintamdecimam prædictas in-
de levare intenditis ad opus nostrum, in ip-
sius Abbatis et Villanorum suorum prædi-
ctorum præjudicium et gravamen: Nos no-
lentes prædictum Abbatem, pro eo quod ipse
de temporalibus spiritualibus suis annexis
Cc decimam

Scriptura 15.
Vile pag 73.

decimam solvit in hac parte indebitè prægravari, vobis mandamus, quod deductis redditibus, servitiis, et custumis Villanorum prædictorum, quæ inter temporalia prædicti Abbatis spiritualibus annexa ad decimam sic taxantur, et de quibus idem Abbas decimam solvit, sicut prædictum est, residua bona et catalla eorundem Villanorum taxari, et dictas decimam et quintamdecimam inde ad opus nostrum levare faciatis, prout aliàs in hujusmodi taxationibus fieri consuevit. Et si quid per vos à præfatis Villanis indebitè levatum fuerit, id sine dilatione restituere faciatis eisdem. Teste meipso apud Pontefractum primo die Martii, anni regni nostri septimo.

Charta de Homagio factio pro terrâ de Gavelkind, sicut de Villenagio.

Scriptura 16.
Vide pag 73.

Sciant omnes tam posterius quam præsentibus quod W^m filius W^m de Elmton, & Radulfus frater suus diviserunt hereditatem suam de duabus villis Burne et Ellrintune, sicut de Gavelikende in Curia S. Augustini,

in

in præsentia Domini Rogeri electi ejusdem
ecclesie & plurimorum Monachorum &
Laiorum: & Radulfus relevavit in ea-
dem Curia partem suam. Ipse verò Radul-
fus de medietate istarum duarum villarum
fecit homagium Abbati sicut de Villenagio,
& reddet de Burne gablum quinquaginta
solidi. quatuor terminis anni, dominicâ viz.
Palmar. xxij. s. vj. d. in Nativitate S. Jo-
hannis tantundem, ad festum S. Michaelis
tantundem, ad festum S. Thomæ ante Na-
tivitatem Domini tantundem, & tantundem
servitii quantum ad idem Villenagium
pertinet, faciet. Similiter de medietate de
Wilrinton, idem Radulfus alios quinquagin-
ta solidos, eodem modo, et eisdem terminis
reddet cum servitio. Ego autem R. Dei
gratiâ electus beati Augustini Cantuarien-
sis ejusdemque loci conventus, hanc partem
sue hereditatis præsentî chartâ et sigillo ec-
clesie nostræ eidem Radulfo confirmavimus.
Hiis testibus quorum nomina subscripta sunt,
Will^{mo} filio Nigelli, Elya de Sillingheld, Ra-
dulfo de S. Leodegario, Radulfo de Croye,
Eylgaro de Clure, Hugone Cosin, Stephano

de Bernardinton, Alano de Reading, Daniele de Wybelesberhe, Hamone de Solforde, Hamone de Aldelose, Alano de Legh, Rogero de Wadenhale, et pluribus aliis.

Chirographum per vetustum de Nuptiis contrahendis, & Dote constituenda.

Scriptura 17.
Vide pag. 76.

Here appeareth in this writing the agreement that Den swutelay on hyran zeprite þa soþeþas þe Godwine made with Byrhtic when he his daughter Godpine poþte wið Byrhtic þa he his dohter wooed, that is first that he gives her one pounds wight of gold (a) so as she his agreement re- zepitra golde wið þonne þe heo his soþe un- ceived, & he giveth her those lands at Sure with þenþenge, 7 he zeuþe hie þar landes æt Sþate mid all that thereto apperteneþ, & in Burwaremerþ eallan þon þe hæto heþð, 7 on Bupapameþree one hundred and fifty acres, and (b) thereto thirty oðer healf hund æcepa, 7 fæto þætting oxen, & twenty coves, & ten horses, & ten bond- oxna, 7 tæntig cuna, 7 tyn hors. 7 tyn ðeop- men. This was (c) spoken at Kingstone before Cnute mon. Ðis þær zespe: n æt cinge stune beforan Cnute king in Living the Archbishops (d) witnesse, & in eithes on Læfinges ærcebiſcopes zepitnesse, 7 on the Covenants at Christ-church, & Ælsmereſ (the) Ab- þær hieþes æt epiſtes epcan, 7 Ælmeþes ab- bats, and the Covenants at S. Augustine, and Æthel- Eodes, 7 þær hieþes æt S. Augustine, 7 ſeþel- wines (the) Sheriffe, and Siredes th'elder, and God- þmes zeþegeþeþan, 7 Siþes ealban, 7 God- wines

(a) (condi-
tionally (and
upon this con-
sideration)
that she accept
of his speech,
i. e. consent
to the agree-
ment, or con-
tract here
made, and on
these terms
will become
his wife.
(b) withall.
(c) agreed.
(d) presence.

wines Wulfeyes sonne, and Ælsy child, and Ead-
 ping Wulfages sunu, 7 Ælfrige cild, 7 Ead-
 mer at Burham, and Godwine Wulfstanes sonne, and
 meþ æt Bupham, 7 Godwine Wulfstanes sunu, 7
 Charles the kings (c) knight, and when men that mai- (c) Minister.
 kan þær cinges cniht, 7 þa man þæt miz-
 den fetchd to Brightling, then went of all this (f) in (f) for surety.
 ðan sette æt Bynhtlingan, þa eode þyres ealles on
 pledge Ælgar Syrcdes sonne, and Freeth priest of
 boph Ælgar Synodes sunu, 7 Fæpþ ppeort on
 Folcstone and of Dover Leofwine priest, and
 Folcestane 7 of Dorsetan Leofwine ppeort, 7
 Wulfy priest, and Eadred Eadelmes sonne, and
 Wulfige ppeort, 7 Eadwæs Eadelmes sunu, 7
 Leofwine Wærelmes sonne, and Cenwold rust, and
 Leofwine Fæpelmes sunu, 7 Cenwold rust, 7
 Leofwine Godwines sonne at Horston, and Leofwine
 Leofwine Godwines sunu æt Hoptune, 7 Leofwine
 the red, and Godwine Eadgifes sonne, and Leofsun
 se neade, 7 Godwine Eadgeofes sunu, 7 Leofsunu
 his brother. And which soever of them longest liveth
 his broðer: 7 swa hweðer heora lareg libbe
 (g) take all (h) possessions as well that land that (g) seize.
 so to eallan ætan ge on ðam lande he (h) inheritan-
 I to them give as every thing. This thing is knowne
 ic heom gærgeworðlecon þing. Ðysse þinga is gecore
 (i) to all valiant men in Kent, & in Suffex of Thanes (i) of each, or
 ælc bohtig man on Kent, 7 on Suffexan on ðegenan every.
 and of Churles, and this writing is (l) three-fold, (l) doughcy.
 7 on ceoplan, 7 þysse gewritu synð ðreo. (l) tripartite.
 one is at Chriſt church, (m) another at S. Augustine, (m) a second,
 an is æt cyrces cyrcan, oðer æt S. Augustine,
 the third hath Byrhtic himself.
 7 hweðer hærð Bynhtic self.

*Testamentum Ethelstani Etheling, filii regis Ethelredi,
quo (inter alia) consulit Ecclesia Christi Cantuarie,
manerium de Holingburne, anno Christi 1015.*

In God Almightyes name I Ethelstan Prince

On Godes Almightyes name ic Ethelstan Etheling
make knowne in this writing how I my substance &
geppoteh on þisen geppite hu ic min aþe 7
my possessions given have for Gods (n)love &

(n) glory.

min ege geþunnen habbe Gode to loue 7
my soules redemption, & my father Ethelredes
minne saule to alyfedeþe, 7 mine fader Ethelredes
king that I it of (o) earned, that is first that I

(o) obtained.

kinges þe ic hit et geþinode, þe 7 æpeþ þe ic
consent that man (p) set free every forfeited (q) surety

(p) set at li-
berty.

(q) pledge.

(r) Fortè mæ-

cipia. Vide

Disti. nar.

mostr. in voce

þite-ðeop.

Spelm. Glof-

ter. veib. De-

mesicm, pag.

222. col. 2.

Item Concil.

p. 403. & Marc.

Paul. Add.

ram. p. 243.

(f) contract.

(t) possesse.

(u) for.

(x) for.

(y) for.

gan þe man geþeý echne þite verðeman
(r) that I by (f) promise (t) ought. And I give in

þe id on speche oðte. And ic gan in
with me where I me rest to Christ & S. Peter those

lands at Eadburghbery which I bought of my fa-
londer æt Eabbunþbery þe ic bogte æt min va-

ther (u) with two hundred marks of gold by weight,
þeþ mid tuam hund mancuse golðes þe geþite,

& (x) with five pounds of silver, & that land at Mera-
7 mid viþ pund seluþes, 7 þeþ land æt Mepa-

lesan which I bought of my father (y) with two
lesan þe ic bogte æt min vaders mid þriððe

hundred marks and a half of gold by weight, & that
healf hund mancosen golðes by geþite, 7 þeþ

land at Mordunewhich my father me to let I give into
land æt Mordune þe my vaders me to let ic gan into

that

that place for our both soules, & I him this pray
 þane ƿrope ƿon unke begne soule, 7 ic hine þar biððe
 for Gods love & for S. Mary & for S. Peters that ic
 ƿon Godes love 7 ƿon S. Marie 7 ƿon S. Petres þe hit
 stand mought, & that sword with silver hilt that
 standen mote, 7 þar spenber mid selapene hilt þe
 Wolfriht made, & that gilt pouch, & that braceles
 ƿolfriht ƿroge, 7 þane gelben veteles, 7 þane begn
 which Wolfriht made, & that drink-horne that I
 þe Wolfriht ƿroge, 7 þane spenche horn þe ic
 ere of that Covent bought at Ealdminster. And I
 en at þan ðinbe bogte on Ealmenstre. And ic
 will that men take that money which Athelwolds
 wille þe man nime þe fye þe Apelyolber
 widow me ought to (z) pay which I for her ere (z) yeild.
 þar me oge to gelbenne þe ic for hire en
 paid have, & dispoſe it Elfsy biſhop to Eald-
 gerhote habbe, 7 biððe Elfsige biſcope into Ealde-
 minster for my soule, that is twelve pounds (a) by (a) numberd.
 menstre ƿon mine soule, þe ƿyns twelf pund by
 tale. And I give to Christ-church in Canterbury
 tale. And ic gan into epiſcopes cheſiche on Cantreþes
 thoſe lands at Holingbourne and thoſe which thereto
 þe londes at Holingbourne 7 þar þe þe
 appertaine, except that one plough-land that I to Si-
 lih, buten þar ane ſpolinge þe ic Si-
 ferth given have. And thoſe lands at Garwaldin-
 ferth geunnen habbe. And þar londes at Liappalbin-
 tune, & I give thoſe lands at Riſherfelde to the nuns.
 tune, 7 ic gan þar landes at Riſherfelde into nunnen
 miſter of Saint Mary (b) gratis, & one ſilver (b) freely.
 menestre rehte Marie þanke, 7 enne ſelapene
 great piece of five pounds, & to New-miſter one
 micle of viſ punden, 7 into Nie remeneſtre enne
 ſilver

silver basin of five pounds in that holy Trinitie
 relupene hysen of viij pounden on þape halge þpinnerre
 name that the place is dedicated to: And I give to
 namen þe iye scope is fopholi. And ic gan to

(c) Crucifix.

Shaftesbury to that holy (c) rood & to Saint Edward
 sefterþen to þape halge nose 7 to reynre Eþrans
 those vi. pounds which I to Edmund my brother
 þape vi. punde þe ic Edmund mine broðer

(d) made.
 known.

(d) committed have. And I give to my father Echel-
 gepirre habbe. And ic gan mine vaden Eþel-

(e) saving.

ted King those lands at Cealtune (e) except those
 þes kinge þar lonðer at Cealtune biten þan
 eight hides which I to Aelmer my Minister given
 egeuþiden þe ic Aelmeþe mine knigte geunnen
 have. And those lands at Northtune, & those lands
 habbe. And þar lonðer at Northtune, 7 þar lonðer
 at Mullinton, & those silver hilted swords which
 at Mullintune, 7 þar relupe hiltene spenber þe
 Wilkytel posselth, & that brigandine that with Mor-
 ylkýtel ahte, 7 þape þpenien þe mid Mor-
 kere is, & those horses that Thurbrand me gave, &
 kepeþ, 7 þar þonþer þe þunþanþ me 7ar, 7
 those white horses which Lieþwine me gave. And I
 þar þpiten þonþer þe Lieþþine me 7ar. And ic
 give to Eadmund my brother those swords which
 7an Eadmunðe mine broðer þar spenber þe
 Offa King enjoyed. And those swords with the hol-
 Offa King ohte. And þar spenber mid þam þer-
 low hilt, & one javelin, and one silver (f) hemmed

(f) tipped.

ted hilt, 7 ones þonþer, 7 ane relupe hemmed
 war-trumpet, and that land which I possesse in East-
 bleþ hofn, 7 þape land þe ic agte on Ert-
 angle. And those lands at Peakeþdale. And I will
 engle. And þar lonðer at Peacerþdale. And ic wille
 that

that men deliver every yeare one dayes (g) ferme to the (g) viduit.
 þet man geleroeche geþe ane dey þeþme þan
 coveit at Ely of this land on S. Etheldrichs masse-
 hipede into Ely of þise ane on S. Epelornide merre-
 day & give likewise to the minster one hundred
 dey 3 geþelle þen to mentyne an hundres
 pence. & feed there on that day an hundred
 paneger. 3 geþebe þen on þanne dey an hund
 (h) poore. Be ever this almes delivered yearly, (i) on (h) needy.
 þearþne. 3y eumery elmerre gelerogennamliche oge (i) posside,
 the land he that (k) oweth, whilest Christendom stan- i. e. whoso
 land 3y þe oge þe hyle christendom 3ton- ever owes the
 deth. And if he will not that almes performe who land.
 bet. And geþo nesh þe elmerre geþonþi þe (k) possideth.
 that land hath, go that land to S. Etheldrich. And
 þet land habbeþ gang 3e ane into S. Epelornide. And
 I give to Eadrich my brother one silver billed sword.
 ic þan Gasppe mine breþer ane 3ilven hiltet 3pord.
 And I give to Elfsy bishop one gilt (l) crose which (l) Crucifix
 And ic þan Elfrige biscope ane gilt made þe 3y
 is with Eadrich Syfeds. 3on, & one black Rede. And
 mid Gasppe Syfleder sumu. 3enne blacne rede. And
 I give to Elmer those lands at Hamelden which he
 ic þan Elmeþe þar londeþ at Hamelsen þe he
 (m) crehad. And I pray my father for God Al- (m) sometime.
 en agte. And ic biðde mine vaden von Godes Al-
 mighties love & for mine that he that (n) give which I (n) confite.
 misties love 3 von minen þet he þar geunnen þe ic
 to him given have. And I give to Godwine Wlnothes
 him geunnen hadde. And ic þan Goppine Wulnoþes
 3onne those lands at Conitune which his father (o) ere (o) sometime.
 3unþ þar londeþ at Conitune þe his fader en
 possessed. And I give to Elfsith my (p) foster mother (p) nurse.
 age. And ic þan Elfrige minne forþen moden
 Dd for

(q) for.

(r) i. sewer,
fort.(f) Forté, a
Cutlath.

(t) from.

(u) sometime.

for her great deserving those lands at Westune
 for hise muchele geapnunge þar lonðer at Fortune
 which I bought of my father (q) with three hundred
 þe ic bogte at mine vaden mid þriðde halfe
 marks lacking a half of gold by weight. And I give
 hund mancuren golðer be geþigte. And ic gan
 to Elfwine my masse-priest those lands at Horelve-
 Elfwine mine messre-pheort þar lonðer at Doppelue-
 stune & those swords which Wyther enjoyed. And
 stune 7 þar sƿeðer þe Wyþen agte. And
 my horse with my furniture. And I give to Eyl-
 miner hopper mid mine gepode. And ic gan Eyl-
 mere my (r) dið thane those eight hides at Cateringe-
 mere mine diðhe þeyne þane egte hide at Cateringe-
 rune, & one diverse-coloured stede & those sharpe
 tune. 7 ane rogne sƿede 7 þar rhiapbede
 (f) swords & my target. And I give to Syferth those
 sƿeðer 7 mine tanke. And ic gan Syferth þar
 lands at High-cliffe & one sword & one horse &
 lonðer at Hoggenclýue 7 ane sƿeðer 7 ane hopper 7
 my bowed shield. And I give to Ethelferth Stame-
 mine bogede secler. And ic gan Ethelferth Stame-
 ren & Lyving those lands at Tywyng. And I give
 þen 7 Lyvynge þar lonðer at Tywynge. And ic gan
 to Liefstane Liefwines brother what of that land-
 Liefstane Liefwines broðer quatter þane land-
 estate which I (t) of his brother took. And I give
 þane ðe ic af his broðer nam. And ic gan
 (u) to Lyemare at Bygrove those lands which I him (u)ere
 Lyemare at Bygnoue þar lonðer ðe ichim epe
 from took. And I give to Godwine Drevelen those
 of nam. And ic gan Godwine Drevelen þane
 three hides of land at Little Gareshale. And I give
 þriapre hide at Little Gareshale. And ic gan

to Edith Wynfelds sonne that sword (x) which the (x) is marked
 Esop. Wynfelde sunu þas sponder þe hand is on marked. And I give to Elfwine my
 hand is an gemæces. And ic gan Elfwine mine
 minister that sword which he to me (y) sometime gave,
 cniht. þas sponder þe he me eþ sýalde, (y) sometime
 And I give to Elfnoth my sword whire, & to my
 And ic gan Elfnode mine sponder hþiten. 7 mine
 Huntsman that stede which is at Colingeregge. And
 Dierhunte þas sponder þe is at Colingeregge. And
 tender men of my gold to Elurith at Berton & to
 healde men of mine gold Eluride at Bestune 7
 Godwine Drevelen so much as Eadmund my bro-
 Godepine Drevelen spon michel spon Eadmund my bro-
 ther knows that I to them of right to yeild ought.
 þer for þat ic heom mid rihte gælden oge.
 Now thank I my father with all humility in God
 Nu þonky ic mine vader mid alre eðmodnesse on Gode
 Almightyes name for that answer which (he) to me sent
 Almytæes name þape anspere þe me sende
 on Friday after midsummers masse-day by Elfgare
 on frideday after midsumeres messe-daye by Elfgare
 Elfstanes son, which was that he to me signified by
 Elfstane sune, þet þas þet he me kigde a
 (z) my fathers message that I might by Gods permis- (z) a message
 mines fader sponder þ ic most by Godes geli- from my fa-
 sion & by his give my lands & my (a) possessions as ther.
 aue 7 by his unnen mine aþe 7 min ege spon (a) substance:
 to me most expedient seemed, (b) either for God & (b) i. e. either
 me mest þes þugte, aþen for Gode 7 to divine or
 for the world. And of this answer is to witnesse secular use.
 for people. And þisse and sponer is for gewitnesse
 Eadmund my brother & Elfsy bishop, & Byrhtmer
 Eadmund my broðer 7 Elfrige biscope, 7 Byrhtmer
 D d a Abbat,

- Abbot & Eilmer Elmiche's sonne. Now pray I all the
 Abot & Eilmer Elmiche's sonne. Nu bide ic alle he
 (e) testament. wife men which my (c) will shall hear read either
 (d) Clerks. myn quye gehye's pese eyden
 (e) Lays. (d) Clergie & (e) Lays, that they be of assistance that
 (f) testament. my (f) will stand may, for my father giveth leave
 (g) testaments. my (g) wills standing. Now declare I that all
 on mine quye soene. Nu bide ic alle
 those things which I to God unto Gods church &
 po (f) my he is to God into God's church &
 Gods servants given have be don for my dear
 God's seven geunnen hadde ry gedon von myner lieuer
 fathers soule Ethelred King & for mine & Elfrith
 fader soule. Eghelred Kynges & for mine & Elfrith
 my grund-mother that me fadd, & for all theirs that
 mine ealder-moðer be me verðe, & for alre þare be
 me to this (h) goods helped. And he than this
 me to þise goden gefilten. And se þe þise
 (i) testament. (i) will through any thing breaketh for him give an ac-
 quye þing eny þing aþende hadde him þis
 don't thereof to God Almighty, & to Saint Mary,
 God's Almight, Gemene, & to Saint Peter,
 & to Saint Peter, & to all those which Gods name
 I þis reyne Peter, I þis alle þe þe God's name
 do had.

Charta

Charta Libertatum Ecclesie Christi Can-
tar. concessar, per Regem Henricum
primum.

H. Dei gratiâ Rex Anglorum, Episcopis, Comitibus, Proceribus, Vicecomitibus, cæ-
terisque suis fidelibus Francis & Anglis in
omnibus Comitatus in quibus Archiepiscopus
Radulfus & monachi ecclesie Christi
Cantuarie terras habent amicabilem Salu-
tem. Notum vobis facio me concessisse eis
omnes terras quas tempore Regis Edwardi
cognati mei, & tempore Willielmi patris mei
habuerunt & Saca & Sorne on Strande &
Stream, on Mode & Felde, Tolnes & Teames,
& Oxthreces, & Pamsorne, & Forestalles, &
Infangenes thlodes, & Fleamen sequente super
suos homines infra burgos & extra in tan-
tum & tam pleniter sicut proprii ministri
mei exquirere debent. Et etiam super tot
Thegenes quas eis concessit pater meus. Et
nolo ut aliquis hominum se intromittat nisi
ipsi & ministri eorum, quibus ipsi commit-
tere voluerint, nec Francus nec Anglus.

Scriptura 19.

Vide pag. 123.

propterea quia ego concessi Christo has consuetudines pro redemptione anime mee, sicut Rex Eadwardus & pater meus antebac fecerunt. Et nolo pati ut aliquis eas infringat, si non vult perdere amicitiam meam Deus vos custodiat.

Thus Englished in the same Charter.

D. þuþ godes geu englelanþes cning gþete ealle mine biſcopes 7 mine eoples 7 ſcinegeþeuan 7 ðegenas þancuſte 7 anglife on ðam ſcipan þe Raulf ænceb. 7 þe hƿeþ æt criſteſcincean on Cantpapeþes 7 habbaþ laod anne fpeondlice. 7 ic kyðe eop 7 ic hæbbe heom geunnon þi biþ on ælce þape lande þu þe þe hi hæfþon on Eþaptes kinger ðæge minnes meget. 7 on Willhelmes kinger ðæge minnes fæder. 7 ſaca. 7 ſocna. on ſþanþe 7 on ſþeame. on þutan. 7 on ſelþan. tolnes 7 teames. gniðþneces 7 hamrothe. poþſtealles. 7 inſangenſ þroues. 7 flæten feornþe ofen hiſe ægen man binnan þurþan. 7 butan. ſpa full 7 ſpa fopþ ſpa mine ægene picneþes hit ſecan ſcolþan. 7 ouer ſpa þela ðegenas [ſpa ic heom to geleten hebbe] 7 ic nelle þ ænig man ænig ðing fæp on tƿobuton hi. 7 heope picneþes þe hi hit beðacon pillah ne ſpænſſe ne engliſce. poþþan þingþan þe ic hæbbe criſte þas geþihte þon geuen minne ſaple to alyfðeþneſſe ealſpa Eadpaþo kýng 7 min fæder æp hæfþon, 7 ic nelle geðauian þ ænig man þis to þiece be minan fullan fpeondſcipe. God eop gehealde.

[] This answers not to the Latine; that, quod eis concessit pater meus; this, as I to them have granted.

Charta

Charta consimilium libertatum Ecclesie
S. Augustini Cantuar. concessarum per
S. Edwardum Regem.

Ego Edwardus Dei gratia Rex Anglorum, Scriptura 20.
Vile pag. 112.
& 113.
Eadsino Archiepiscopo, et Godwino Comiti,
& omnibus suis Baronibus Cancie, Salu-
tem. Sciatis me dedisse Deo & S. Augusti-
no & fratribus ut habeant eorum Dacia &
Dacna, et pacis fracturam, et pugnam in do-
mo factam, et via assaltus, et latrones in
terra sua captos, latronumque susceptionem
vel pastionem, super illorum proprios homi-
nes infra Civitatem et extra, theloniumque
suum in terra et in aqua, atque consuetudi-
nem qua dicitur Teames. Et super omnes
Allodiaros suos quos eis habeo datos. Allodiarum. Nec
volo consentire ut aliquis in aliqua re de his
se intromittat, nisi eorum prepositi quibus
ipsi hoc commendaverint, quia habeo has
consuetudines Deo datas et S. Augustino
pro redemptione anime mee ita pleniter et
libere sicut melius habuerunt tempore pre-
decessoris mei Knuti Regis, et nolo consentire

ut.

ut aliquis hæc infringat, sicut meam amicitiam vult habere.

Epistola Gaufridi Supprioris & Monachor.
Ecclesiæ Cantuariensis ad Regem Henricum 2. de lite inter eos & Baldwinum Archiepisc.

Ser'pura 21.
Vide pag. 67.
& 101.

Excellentissimo Domino suo H. Dei gratia Anglorum Regi G. Supprior & Conventus ecclesiæ Christi Cantuar. flebilis & ultra modum afflictus Salutem & suspiria fletuum & afflictarum respicere. Cum scriptum sit: Gloria in excelsis Deo, & in terra pax hominibus bonæ voluntatis: ut pro bona voluntate in terris habita, gloriam habeatis in cælis, Serenitati vestræ quem in nullo offendisse credimus vel recognoscimus, supplicamus, ut si quid odii aut rancoris concepistis adversus nos aut ecclesiam Cantuar. odio personæ alicujus aut operis præsentis temporis vel præteriti, quod nos debeat respiciere, pietatis intuitu remittatis, attendentes innocentiam nostram, nec vindictam aliorum peccata in nobis. Si peccavimus

numque publice, puniuntur, sui autem, quod
ecclesia Cant. de qua omnes Anglorum Re-
ges, non solum fidem Christi, sed & cora-
nam Regni sempserunt, quæ usque modò li-
bera exiit, captivatur & conculcatur ab
hominibus, cum sit mater omnium in regno
Angliæ manentium. In Christo Jesu vobis
dicimus, timeamus ne novitates multe &
male subito oriuntur, quarum principia etsi
nos sentimus, forsitan exitus alios quam nos
tanget nec transire permittet immunes, sed
involuet. Qui hanc novitatem non admire-
tur, quod Dominus Archiepiscopus dicit
nos debere de eo terras & possessiones no-
stras tenere: cum jam per quingentos annos
& eo amplius, à tempore scil. magni Theo-
dori, qui terras partitus est, & utrique parti
suam portionem assignavit, Convenerit in
pace possederit portionem suam, & libere
administraverit, quod & charta Regum &
Pontificum plenius attestantur, ex quarum
tenore perspicuum videre est, quod usque ad
hac infelicitatis tempora, Archiepiscopus
nihil juris vel dominationis plus habebat in
terris Monachorum, quam Monachi in terra

Nota.

Archiepiscopi. Et ne super hoc quisquam
 dubitet, proferantur in medium charta S.
 Edwardi Regis & Sancti Anselmi Archiepi-
 scopi, & alie multe Regum & Pontificum.
 Quod autem dicitur Lanfrancum dividisse
 terras, ideo est, quod cum Normanni, capti
 Angliã, omnium ecclesiarum terras occupas-
 sent, Rex Will. ad instantiam Lanfranci,
 eas resignavit. Lanfrancum vero singulis
 ecclesiis reddidit quod antea possederant, sibi
 autem quod antecessorum fuerat suorum re-
 tinnit. Quod autem tempore Lanfranci non
 sit facta terra divisio, testantur chirogra-
 phia ante tempora beati Dunstani facta in-
 ter Archiepiscopos & Monachos de concam-
 biis terrarum multarum: sed & hoc atte-
 stantur scripta vetustissima qua lingua An-
 glorum, Landhokes, id est, terrarum libros,
 vocant. Quia vero non erant adhuc tem-
 pore Regis Willielmi milites in Anglia, sed
 Threnge, præcepit Rex, ut de eis milites
 fierent ad terram defendendam. Fecit au-
 tem Lanfrancus Threngeos suos milites:
 Monachi vero non fecerunt, sed de portione
 sua ducentas libras terre dederunt Archi-
 episcopo,

Landhokes,

Th eng.

episcopo, ut per milites suos terras eorum defenderet, & ut omnia negotia eorum apud Curiam Romanam suis expensis expediret. Unde adhuc in tota terra Monachorum nul- Nota.
lus miles est, sed in terra Archiepiscopi. Terram tamen ducentarum librarum adhuc habent Archiepiscopi: pro quibus omnibus valdè miramur, quòd vel talia dicit, vel quòd assensum ei præbetis, quòd vestra auctoritate & nomine vestro, per ministros vestros res & possessiones nostras invadit, cum nichil ad eum spectent, set nos teneamus post Deum in capite de vobis, sicut & ipse: quod manifestum est, decedentibus Archiepiscopis, quia terræ eorum statim confiscantur, à seculo autem inauditum est, quòd possessiones nostræ confiscatæ fuerint aliquo tempore. Quapropter supplicamus, ut maturius pro Deo dum potestis hæc corrigi faciatis, cum fortè tunc (a) velitis, cum non (b) potueritis. Valeat.

(a) Fortè,
voletis.
(b) poteritis.

Donatio Wolgithæ de manerio de Stilled, A. D. 1046.

Here appeareth in this writing how Wolgith gives Scriptura 21.

Dyēn ppolet on þren gepwde hu Vide pag 85.

Ec 2

her

her substance after her departure, which to her the Al-
mighty God gave in life to use, that is then first
my Lord his right Heritor. And I give that land
mine Houesbe his right Heir. And ic gan her land
at Stistede (a) by Gods (b) witnesse & my friends

(a) with.

(b) testimony. at Stistede

(c) i. e. ad vi-
dum.

a Gode's geschene. I mine wifenden
to Christ church to the Monks for (c) sustenance,

(d) lives time.

into Epirter-cheneche. Ja Munecen to vortpe,
on this condition that Elskitel & Kytel my children
on panne gepebe her Elskitel & Kytel mine beathne
use those lands for their (d) dayes; & afterward go
bruce her londer hyne. And ic gan her

(e) deaths.

that land to Christ church without any deduction
her land into Epirter-cheneche buten etchene apentale
for my soule, & for Elswines my Lords, & for
von mine saule, I von Elswines mine Houesbe, I von
all my children, & be halfe the men free after their
alpe mine dienne. I by malur be men vortep hie
(e) dayes. And I give to the church at Stistede

(f) together.
with that.

dayes. And ic gan myo hane cheneche at Stistede
(f) besides that which I in life gave Eldemesland &

(g) withall.

to her. Ja ic ge on live gepe Eldemesland &
(g) thereto Hyellen, that there be in all fifty acres in
her to Hyellen. her her ryallor vortep eke per on

(h) champion

(h) field after my departure. And I give to Wolk &
velde eke per mine vonne. And ic gan to Wolk &

Kytel my sonnes that land at Wallingham, & at
Kytel mine rany her land at Wallingham, I at

Charlton, & Herlingham. And I give to my two

Kyldone, I Deplingham. And ic gan mine tpan

daughters Gode & Bore Sexlingham & Summerlede-
bortepen Gode & Bore Sexlingham. I Sumplede-

ton,

ron, & to the church at Summell. sixtene acres
 tunc, I into have the peche at Summell. sixtene ekefyr
 of land, & one acre of meadow. And I give to Ealgyth
 londer, I enne ekefyr meo. And ic gan Ealgyth
 my daughter that landar Chenteker and at Ashford,
 mine dogter þer land at Ehentekne I ad Eftetapponþ,
 and the wood which I laid thereto. And I give to
 I þane þode þe ic levede þerto. And ic gan
 Godwine Earle and Harald Earle Frithton. And I give
 Godpinc Eoplc I Danald Eoplc Epiþunc. And ic gan
 to Christ-church to Christs altar one litel
 into Chnizer-chapche to Chnizer feust ane litlene
 gilt (i) crosse and one carpet, and I give to S. Ed- (i) Cuncion.
 gelbene þode I ane setþagel, I ic gan S. Ed-
 mund two boned hornes. And I give to S. Ethel-
 mund the gen teboned honner. And ic gan S. Eple-
 dith one wollen kyrtel. And I give to S. Olyth
 spide ane þellene kyrtel. And ic gan S. Oryþe
 halfe a pound of money. And I give to Austine one
 half pund. And ic gan S. Austine ane
 carpet. And he that my (k) testament bereaverth (k) will.
 setþagel. And ic þe minne quide ben vau
 which I now (l) ordeined have (m) by Gods (n) te- (l) bequea-
 þe ic in bequeþen hadde a Lodeþ. (m) thed.
 stimony, bereaved let him be of these earthly joyes, (n) witho-
 neþerre ben þauþ he þonne þirer enþlicer meryþer, (n) witnell.
 & cut off him the Almyghty Lord which all creatures
 þarþerþing ic Almyghty Driþten þe alle þeppe
 created & made from all (o) holy mens communion (o) sainte.
 þerþop I þerþogge vþam alþe halþene þemennere (p) at.
 (p) in Domelday, & be he delivered to Saram the De-
 on Domercay, I Iy he beragte Satane þane Die-
 vill & all his cursid companions into hell bottoome, &
 þle þalle his arþgeþe þerþen into helle þrunde, I
 there.

(q) be tortu-
red.
(r) reprobates.
(s) Or, Except
he desist from
molesting mine
heires.

there (q) perish with Gods (r) deniers (s) without in-
termission, & mine heires never to trouble (s). Of this
I mine inpenumen neup ne aruenche. Disser
is for witnessle Edward King & many others.
if to gepitnesse Edras King I manie oþne.

*Donatio terrarum apud Apoldre, Orpinon, Palstre, Wer-
borne, Wiltisbam. ecclesia Christi Cantuarie per
Ædsum Presbyterum, de consensu Cnusi Regis & Ælf-
gise Regina, ann. 1032.*

Scriptura 11.
Vide pag. 126.
(t) by.

Here appeareth (t) in this writing how Cnur King
Den Iputelap on þýran gepitne hu Cnur cýng
& Ælfgise his Lady gave to Eadly their Priek
I Ælfgru seohlaþsige geþan Eadryge heona ppeort
when he turned monk that he might (s) convery that

(s) dispo.

þa he gecypte to munice þ he more ateon
land at Apoldre as to himsele most pleasing were.

land at Apoldre þa him cýran leofast pape.
Then gave he it to Christ-church to Gods servants
þa sealde he hit into Cnister-cýpican I Goder geornum
for his soule, & he it bought that of the Covenent his
for his rayl, I he hit gebohte I æt þam lynes his

(t) condition.

dayes & Edwines with fower pounds, on that (t) con-
dæg I Eþpines mid peopen pundan, on þe for-
wa & that men deliver every yeare to Christ-church
pýns þ man geþrte ælc geþe into Cnister-cýpican

(u) eadlos.

three weighs of cheese from that land, & three (u) bun-
dles of Eeles, & after his dayes & Edwines go that
bind æls, I æt þen his dæg I Eþpines gange þ

(x) i. e. en-
tirely.

land into Christ-church, with mear and with (x) men
lande into Cnister-cýpican mid mere I mid mannan
even

even as if then(y) enriched is, for Eadfers soule, and (y) improved.
 eal ƿsa hit þenne geƿodop ƿƿ ƿon Eadƿiger ƿaple, 7
 he bought that land at Werthorne of the Covenat for
 he gebohte 7 land at ƿerthornan at þam ƿipeðe
 his dayes and Eadwines also with sower pounds, then
 his ƿage 7 Eadƿines eac mid feopen pundan, 7 anne
 gooth that land forth with the other after his dayes &
 ƿap 7 land ƿonð mid þam oþpan æfter his ƿage 7
 Edwines to Christ-church with the (z) crop that (z) stock.
 Eadƿines into Cƿarter-cƿican mid ƿæpe talpe þe
 there then on is, & that land for his dayes at Berwick
 þan þenne on 7 7 land on his ƿæg at Berƿican
 which he obtained of his Lord Cnute king, & he
 ƿe he geƿapnode at his hlaford Cnute cýnge, 7 he
 gives also those lands at Orpington in his dayes for
 ƿunne eac þær landes at Oƿpeðingstune on his ƿage ƿon
 his soule to Christ-church to Gods servants for
 his ƿaple into Cƿarter-cƿican þam Godes ƿeopum to
 (a) garment land, which he bought with eighty (a) clothing;
 ƿeopud land, ƿe he gebohte mid hund eahtigan Scrud-land.
 marks of white silver by Hufstings weight, & he gives Hufstings
 mancan hƿiter ƿeolfƿer þe Hufstinger ƿeƿiht, 7 he geun weight.
 also those lands at Palstre & at Wittresham after
 eac ƿæs landes at Palstre 7 at ƿihƿice þamme æfter
 his dayes & Edwines forth with the other to Gods
 his ƿage 7 Eadƿines ƿonð mid þam oþnum þam Godes
 servants for foster-land for his soule. This bequest Foster-land.
 ƿeopum to ƿarƿon-lande ƿon his ƿaple. ƿiƿer cƿiðer
 he geivth to the Covenat on this (b) contract that they (b) condition.
 he geun þam ƿipeðe to þam ƿonƿyðan 7 hi
 ever him well observe, & to him faithfull be in life &
 æ ƿe hine ƿel healðan, 7 him holde beon on life 7
 after life, & if they (c) with any unadvisednesse with (c) by.
 æ ƿon life, 7 ƿiƿ hi mid æneƿan unƿeðe ƿið
 him.

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